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OMNIBUS WATER RESOURCES LEGISLATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON WATER RESOURCES

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 865 and S. 970

BILLS RELATING TO DEEP DRAFT CHANNELS AND HARBORS

JUNE 21 AND 27, 1983

PART 2

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OMNIBUS WATER RESOURCES LEGISLATION

TUESDAY, JUNE 21, 1983

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON WATER RESOURCES,
Washington, D.C.

The subcommittee met at 10 a.m., in room SD-406, Dirksen Senate Office Building, Hon. James Abdnor (chairman of the subcommittee) presiding.

Present: Senators Abdnor, Randolph, and Moynihan.

OPENING STATEMENT OF HON. JAMES ABDNOR, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator ABDNOR. The Subcommittee on Water Resources will come to order.

We have a very distinguished panel of my colleagues with us here today. We welcome you to the committee.

Today we are going to address the difficult subject of cost recovery for the deep port maintenance cost and the cost sharing for new port deepening projects. Between 1978 and 1982, the Federal Government expended $1.7 billion in 1982 dollars to maintain the Nation's deep-draft ports. That comes to $340 million a year and even with modest inflation that amounts to a large long-term drain on the Treasury and a burden to the general taxpayer.

There certainly is concern in the Senate that these costs could be recovered in the future. The consensus has been lacking in the overall important question of how do we recover these costs and from whom. These are not easy questions and the sponsors of the legislative proposals which have been made in this Congress are to be commended in their efforts to resolve this issue. Part of the reason this issue is so difficult to address is that there are many interests on this question, all of whom must be considered in determining the most equitable solution.

Of course the various sides have concerns that cost recovery not be implemented in a way which could alter the existing commercial balance among themselves. Carriers are concerned that costs recovery be equitably shared amongst different types of sea-going craft. Shippers, who will be heard from by this subcommittee on June 27 are concerned that cost recovery will not be equitably shared among the most different products which are transported through our ports. These concerns must be recognized as real.

The effects of different cost recovery methods and levels must be carefully examined in that light. It is then most necessary in this process that all those concerned with cost recovery and most directly affected by the administration and my Senate colleagues recognize the essential need and the willingness to remain open to compromise on this issue. In the spirit of compromise I believe we could recover port maintenance costs, defining cost-sharing policy for new port projects and move forward on these projects which are necessary to the future growth of the Nation's economy.

At this time I would like to call on the dean of this committee, Senator Randolph.

OPENING STATEMENT OF HON. JENNINGS RANDOLPH, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator **Randolph**. Thank you very much, Mr. Chairman.

Deep draft port legislation has been around for a long while and you have been very helpful as we and other committees and subcommittees have discussed this which has taken many forms.

This has been a controversial matter. Many ports have asked that the Corps of Engineers study the deepening of their channels and their turning basins. These studies are in anticipation of major changes down the road, I suppose, not the road but down the port, as we think in terms of the worldwide fleet of cargo vessels.

When we think of the movement of coal to foreign markets, particularly through the Port of Norfolk, I say to Senator Warner, that was in fact the first impetus in this movement.

While we are not exporting as much coal as I believe we would have exported several years ago I do anticipate a resurgence in our export market. We certainly must deepen Norfolk and similar harbors if we are to have the advantage of this great export potential, the coal resource of America.

There are many issues that remain. Who pays for all of this. While it has been traditional for the Federal Government to fund such projects at nearly 100 percent of their cost, this administration, and I am not critical of the administration in this regard except to say that this administration has proposed a system of user fees at deep draft harbors. Many Senators and Representatives of the port sections of the country will testify as to what they believe to be a proper allocation of costs and the appropriate method for collection. I have joined with other Senators in sponsoring several bills and I feel that perhaps, in the long run, that whatever program is developed the most important objective is to dredge the channels and move the cargo.

I look forward certainly, as other members of the subcommittee and the committee will to your testimony. I do believe that the members of our committee will pay very close attention to the various proposals, certainly the comments that you give to us this morning. I do not know personally whether we should have an ad valorem tax or a tonnage based tax but we must move forward. I do know the latter to be true. So the Committee on Environment and Public Works chaired by the able Senator Stafford must make a recommendation on the proper allocation of fees and then work within our committee structure and the subcommittee and under the able Senator presiding today, to develop a method for collection of the fees which we believe are absolutely necessary for needed work.

That seems to me to be a correct, I hope, helpful statement. Thank you, Mr. Chairman.

Senator **Abdnor**. Thank you.

Senator Moynihan?

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator **Moynihan**. Mr. Chairman, just a few words to thank you for your introduction and to continue the remarks of the dean of our committee.

I think our distinguished witnesses and our guests this morning would want to know that we are considering the first change in the policies of the Federal Government in respect to rivers and harbors in 160 years. It was the decision of Justice Marshall in *Gibbons* v. *Ogden* about the monopoly granted by the State of New York with the steamboats on the Hudson River which declared the supremacy of the commerce laws in 1824 and that was the year the Congress authorized its first legislation for cleaning and snagging in the Ohio and Mississippi Rivers.

This has been entirely a federally funded operation since then. But if I may say, Mr. Chairman, among the numbers you described are the maintenance costs which we are dealing with. What has happened in rivers and harbors development is very much what has happened in water supply programs generally which is to say nothing has happened. We have reached a stalemate and the last serious water project that passed this Congress was in 1972. The old arrangements don't work any more. We are seeking newer ones. If you would like an example of the degree to which they don't work any more the Corps of Engineers which has, from the very beginning, been responsible for this work, our distinguished panel might want to know the Corps of Engineers this year is involved in twice as much construction in Saudi Arabia as it is in the United States; that is, which is to say nothing.

We are dealing with the idea of some form of cost sharing. Last year we had 15 bills on the matter. This year we have two. So we are making some progress. I hope that we will see it begin with our panel this morning.

Thank you, Mr. Chairman.

Senator **Abdnor**. Thank you.

We are pleased to have this very distinguished panel starting off our hearings. I know they are all extremely busy and want to get back to their duties. It is my understanding that Senator Hatfield, who I thought at first would be here, will not be able to make it now.

Senator **Warner**. He is at the White House, Mr. Chairman, consulting with the President on the budget.

Senator **Thurmond**. He should be in in a few minutes. The meeting at the White House is over. I suggest we proceed.

Senator **Abdnor**. Gentlemen, Senator Warner, Senator Byrd, Senator Mattingly, I am pleased that you are here. I know you have some strong views on port development and we are anxiously awaiting to hear from you.

Senator Thurmond, let me say this, all statements will be made a part of the record. You can read or summarize, however you care to.

Would you care to start, Senator Thurmond?

Senator THURMOND. Thank you, Mr. Chairman.

I would be glad to. However, Senator Byrd indicated an interest in going first. I am willing to yield to him first.

Senator BYRD. Let me thank the President pro tempor for the courtesy to yield to me but I feel that inasmuch as Senator Hatfield is the chief sponsor of the bill and inasmuch as he is not here, Senator Warner is going to read some of Senator Hatfield's testimony, if that is all right with Senator Thurmond.

Senator THURMOND. It is all right.

Senator BYRD. Then we will proceed from there.

STATEMENT OF HON. JOHN WARNER, U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Thank you, very much, Mr. Chairman.

Senator Randolph, Senator Moynihan, on behalf of those groups interested in these bills, we want to express appreciation to the members of this distinguished committee for the guidance and the cooperation that they have provided and indeed the expeditious manner in which this hearing has been scheduled.

Mr. Chairman, I certainly would like to open by expressing my deepest gratitude to Senators Hatfield, Thurmond, and Mattingly.

As you know, historically, this subject as Senator Randolph and indeed Senator Moynihan have touched upon, has been divided sharply along divided lines in the U.S. Senate and it took the wisdom in the leadership and the experience, particularly of our three senior statesmen here to begin to reconcile the differences and forge the coalition.

Today, I believe I can speak for the group. We sit here at this table united, prepared to go forward in support of legislation which is badly needed.

In the absence of Mr. Hatfield, I will open with three pages of his remarks which we believe frame the appropriate manner in which to approach this subject.

Mr. Chairman, we appreciate the opportunity to present for the record our views on deep-draft port user fees and specifically Senate bill 865. There has been some controversy over consideration of a user fee for deep-draft commercial channels and harbors.

Many interests would suggest that the Federal Government has always paid for deep-draft operations and maintenance, and since the ports are clearly a national commercial resource, this system should continue. While we agree our ports are a national resource, I must say, Mr. Chairman, in an era of $200 billion budget deficits, this attitude is short-sighted, self-serving and denies reality.

We firmly believe the user that benefits from quality ports should help defray the costs. In our bill, we've recognized the national interest, and provided for partial cost recovery, only 40 percent to be borne by the user. But, this is a substantial step forward to assure in the out-years, that our ports' O&M costs can be funded in full.

User fees are not new. We pay daily for our use of facilities and equipment. Good examples are, the highway tolls and the gasoline tax user fee and the Airport and Airways Development user fee.

Even simpler things like State parks and parking garages all fit into this category. So why do we argue over deep-draft user fees, they would be no different?

The real controversy should surround the proper method for assessing such a fee. Congress has been embroiled in this debate for nearly 5 years.

Last October, we started a staff working group to break this logjam and try to put together a compromise bill. S. 865 is such a bill. After years of controversy, we decided to approach this task with a strong foundation.

We began with these ideas:

The user fee must be nationally uniform across all commodities and all ports. Port specific fees for O&M must be rejected.

The fee must not cause any dislocation, diversion or loss of cargo into or out of the United States.

There should be only partial cost recovery because of the national interest in keeping all ports open. No. O&M payment cap should be considered.

The revenue from the fee must be placed in a trust fund dedicated to deep-draft O&M.

We also determine that any bill on deep-draft ports must recognize the difficulty inherent in moving forward with new water navigation projects. A solution must include both the congressional process and postauthorization permitting.

This bipartisan group, I believe, put together a bill that meets all of these requirements and indeed a few more.

At this time, gentlemen, I would suspend and defer to my colleague, Mr. Byrd.

Senator ABDNOR. Senator Byrd, we are anxiously waiting to hear from you. We know you put a lot of time and thought into this legislation. We are most interested in your comments.

STATEMENT OF HON. ROBERT C. BYRD, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator BYRD. Thank you, Mr. Chairman.

You have been true to your word that there would be hearings scheduled. I commend you and the other members of the subcommittee for holding these hearings. I join with Senator Warner and others in regretting that at this particular moment, Mr. Hatfield, who is the chief sponsor of this legislation is by necessity absent from here but he is at the White House or has been and I understand he will be returning shortly.

I thank my colleagues here for their joining in the co-sponsorship of this measure.

As you are well aware, the issue of port improvement policy has not been resolved after some years of debate. That has been pointed out by Senator Randolph and Senator Moynihan and the chairman. So we are appearing here today in this effort and I am hopeful that we are finally at a point where the Senate can move forward on this very important matter.

I have a prepared statement, but since we are limited in time, I will briefly summarize and submit my prepared statement for the record which you indicated, Mr. Chairman, at the beginning it would be included on the part of each of us.

I, of course, come from a land-locked State, the State of West Virginia, but we are very interested in ports. The reason why we are so interested is that we have about 57 billion tons of reserves of high quality bituminous coal. West Virginia is endowed with substantial reserves of metallurgical coal which are among the finest in the world and we also have high quality steam coal reserves.

These endowments have helped to make West Virginia the leading coal exporting State in the Nation. Almost 50 percent of the U.S. coal bound for export markets comes from West Virginia coal mines.

A healthy coal export market is important to the people of West Virginia because it means jobs for thousands of coal miners. The ability of the United States, however, to compete in the world coal market depends to a significant extent upon improvements in our deep-draft ports.

Improvements are important if we are to accommodate the large coal super colliers which will become increasingly important to the world trade. The Deep Draft Navigation Act represents a reasonable, balanced approach to the maintenance and improvement of the Nation's port systems. Its enactment would be a major first step in improving the competitive position of the U.S. coal in the world market.

The coal industry understands this very well. The National Coal Association endorsed this bill, I believe, during its annual meeting last week.

Although coal exports from the United States are far from the record levels of 1980, economic recovery in Europe and Japan should bring an improvement to the coal market. In fact, the Energy Information Administration has estimated that world trade in steam coal alone could reach a total of about 500 million tons by the year 2000.

There is every indication that there will be stiff competition from other coal producing nations for shares of this expanded market. My concern, our concern, is to ensure that we act to improve the competitive position of U.S. coal in the world market. Indeed, we are already facing strong competition from Australia, South Africa, and Poland. Currently, Australia and South Africa are the least cost suppliers to Japan and Western Europe respectively.

The United States is considered the marginal supplier to these markets because the delivered price of U.S. coal is higher than that of Australia or South Africa.

Looking at the various options for reducing the price differential between U.S. coal and the coal of our competitors ocean transportation costs and inland transportation costs appear to be the principal targets of opportunity.

It is not necessary to eliminate the price differential altogether, for many importing nations attach a premium to security of supply and other factors which tend to favor the United States. But it is important to reduce the price differential which in some cases may be as high as $17 per ton.

According to the Interagency Coal Export Task Force, the United States could achieve a stable share of the world coal market, if U.S. delivered prices do not exceed the delivered price of our competitors by more than 15 percent.

Unfortunately, the United States is not in the position to take advantage of the economies of scale available through the use of larger ships. It has been estimated by the Coal Exporters Association that the cost of shipping U.S. coal to Europe could be reduced by about 40 percent if we used 125,000 ton ships but there is not one single coal port in the United States that can accommodate the vessels of that size.

This should be a matter of concern in light of the Office of Technology Assessment's observation that there will be a substantial increase in the number of ships of 100,000 dead weight tons and over.

These super colliers may account for 25 percent of the ocean transport of coal by 1985 and 44 percent by 1990.

Unfortunately, we are among the minority of the world's industrial powers of deep water channels and cannot accommodate coal super colliers. So the legislation that we propose looks to the future and contributes to the improvement in the competitive position of the United States in the world coal market.

The legislation provides for cost sharing between the Federal Government and non-Federal interests for navigation improvement projects. The bill establishes a framework for providing funding for navigation improvement projects. The Federal share of super projects will be provided by an annual transfer of a portion of customs revenues from the general fund. That approach is not without precedents.

There are several existing statutory provisions that allocate specific amounts related to customs revenues through appropriations from the general fund to specific purposes. For example, each year an amount equal to 50 percent of the annual gross receipts from customs revenues is used for the encouragement of exportation and domestic consumption of agricultural commodities. That provision, along with other similar statutes, is described in a memorandum prepared by the Congressional Service which I will submit as a copy with my remarks at the close of my speech.

In conclusion, Mr. Chairman, I would point out that a recent report by the Maritime Administration indicates that the private sector and local port authorities have been moving forward to the land side and related projects to expand and upgrade coal handling capacity of various ports around the Nation.

It is time for us to do our part by acting to resolve the issue of port improvement. Our proposal represents a reasonable approach. It addresses the needs of both the large and the small ports and it complements private and other non-Federal investments directed to enhancing the Nation's competitiveness in the coal export market.

There is no reason that we cannot be the world's leading coal exporter. We should take steps as soon as possible and I urge the committee to act positively on this proposal, even though it may be the committee's wisdom to make changes in the proposal.

Mr. Chairman, that closes my prepared statement. Inasmuch as the President pro tem must leave soon to open the Senate, which will be meeting soon, at 11 o'clock, I would hope that we could hear now from our President pro tem.

Senator **Randolph**. Will we have the opportunity to question later or one by one?

Senator **Abdnor**. Yes. I think we should hear from him now.

STATEMENT OF HON. STROM THURMOND, U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator **Thurmond**. Mr. Chairman, I am pleased to have the opportunity to appear before you and the other distinguished members of the Subcommittee on Water Resources to testify in support of S. 865, the Deep-Draft Navigation Act of 1983. It is especially a pleasure for me to appear with this panel of my distinguished

Senate colleagues—Senators Hatfield, Byrd, Warner, and Mattingly—with whom I joined in introducing this legislation earlier this year.

Mr. Chairman, since we are testifying as a panel, I will attempt to be brief, and confine my remarks to a few particular topics. However, before addressing the specific issue of the special credit account, I want to express my support for this bill in its entirety. The overall theory behind this bill is solid. It transfers a significant portion of harbor costs from the general taxpayer to those who directly use the waterways, and provides mechanisms for financing improvements and expediting sorely needed new projects. On the whole, this measure is a highly desirable approach toward a new, feasible harbor maintenance and improvement system.

Mr. Chairman, you have heard testimony supporting the concept of our bill, including the need for a user fee, the rationale for making this user charge an ad valorem fee, the establishment of a trust fund, and allocation of funding from it for operation and maintenance and port improvement projects.

I believe that we have in this bill the most workable compromise yet proposed in the area of port dredging legislation. The word "compromise" is very important in this legislation, because of the many and varied interests which will be affected by any legislation dealing with port maintenance and improvement.

One of the problem areas we have encountered is the difference of interests between low-maintenance ports and high maintenance ports.

Typically, the low-maintenance ports would prefer any tax or user fee to be port specific, so that they could enhance their competitive advantage vis-a-vis other ports, and so that user fee revenues would inure to their own benefit. The low-maintenance ports generally object to the pooling of fees to pay for maintenance at high maintenance ports. It should be readily apparent that under such a plan, the ports which require high-maintenance would be placed at a distinct disadvantage, because, under a port-specific system, their respective operation and maintenance costs could exceed their respective revenues.

In an effort to develop an acceptable compromise between these competing interests, S. 865 provides for a special credit account. As it is presently contemplated, 40 percent of the costs of each port's operation and maintenance will be paid from revenues generated by the nationally uniform, ad valorem user fee. The remaining 60 percent will be paid from the Treasury general fund. This provision places all ports on an equal footing, regardless of the cost of operations and maintenance, and the amount of user fee revenues generated. In this manner, the high-maintenance ports are assured that there will not be a deficiency between costs and revenue.

The special account was created in order to provide the low-maintenance ports with an equivalent benefit. Since these ports may be required to expend less for operations and maintenance than is generated by the user fee, the special credit account preserves some of the benefits naturally accruing to them.

Mr. Chairman, let me emphasize that national uniformity of the user fee is absolutely essential from our standpoint. A uniform fee will advance the interests of national defense and international trade by encouraging much needed harbor improvements and assuring a reliable program of maintenance. Our objective in imposing this user fee in a uniform manner is to essentially preserve the status quo among ports, discounting all other factors, so that all will continue to be on an equal footing with shippers, insofar as the user charge is concerned.

Mr. Chairman, the special credit provision of S. 865 provides that a port whose user fee revenues exceed its operation and maintenance costs may have a percentage of that excess deposited in that port authority's subaccount of the special credit account. Any money deposited into the special credit account will be available for that particular port, or port authority, to be applied to the local share of any qualified port improvement projects. Under our bill, funds may remain in the special credit account for a period of 5 years, at the end of which time, any funds not applied to the port's improvement projects will be transferred to the general navigation improvement account for all ports. In this way, the low-maintenance ports will obtain the kind of benefits which would be expected in the case of port-specific fees.

Mr. Chairman, I want to emphasize this special credit feature is one of the chief elements of the compromise presented by the Deep-Draft Navigation Act. As with all compromises, it is necessary for those on the extremes to recede somewhat from their preferred position, in order that a satisfactory solution may be reached to best serve the national interest.

I believe this bill presents the most workable and desirable approach to the difficult question of cost sharing for port dredging. If we are to have a viable port-dredging program in future years, I believe we must accept the cost-sharing concept, with the user fee being the most logical means of raising the necessary funds. Acceptance of this compromise will make it possible for our Nation to properly maintain and improve the ports which are so necessary to international commerce.

Mr. Chairman, I thank you for allowing me this opportunity to testify in support of this bill and to discuss in some detail the special credit account feature of the legislation we have proposed.

Thank you very much.

Senator **ABDNOR**. We thank the distinguished President pro tem of the Senate and also the minority leader for their input.

Senator **THURMOND**. Thank you.

If you will excuse me, Mr. Chairman, I have to go and open the Senate.

Senator **BYRD**. Mr. Chairman, I, too, have to go. I don't think we have agreed on any particular legislation to be taken up on the floor yet.

Senator **ABDNOR**. May I interrupt just a second to ask Senator Randolph if you wanted to ask a question.

Senator **RANDOLPH**. You are very kind. I want to commend all of you. I am gratified that I can be 1 of the 11 sponsors of this measure because I do agree, as Senator Thurmond has said, that this is a major piece of legislation on which I have been privileged to join.

Senator Byrd, your statement was helpful and constructive. Do you have any figures on the anticipated coal exports which have been developed by our coal operators? I think that you have indicated in your statement that West Virginia provides 50 percent, as I recall, of U.S. coal exports.

Senator **Byrd**. Yes. The year before last, total U.S. exports numbered 110 million tons, and last year it was something like 102 million tons. West Virginia does export approximately 50 percent of the coal that is exported from the United States.

Senator **Randolph**. That is very helpful, Mr. Chairman, for the record here today. We are frankly talking about huge amounts of this resource called coal. Is that correct? Huge amounts?

Senator **Byrd**. I beg the Senator's pardon?

Senator **Randolph**. I say we are talking about huge amounts?

Senator **Byrd**. Oh, yes, and as many as 30 other countries have either deepened their coal ports or are in the midst of planning on going forward with the deepening of their coal ports. I think the largest coal ship that can be accommodated in our ports is about 80,000 tons and what we are talking about are harbors that will be deepened to the point that they can accommodate supercolliers of 120,000 tons or more. It is estimated that by 1985, 25 percent of the coal that is transported across the ocean will be in such supercolliers. By 1990, 44 percent of the coal will be in those supercolliers.

I think it has also been estimated that the difference in cost at the point of delivery could be as high as 40 percent if we are able to ship in these supercolliers.

Senator **Warner**. Mr. Randolph, those figures are ball park but the thing about it is that the purchasers of this coal want long-term contracts. One of the central factors is the transportation cost. Inability to accommodate supercolliers will soon take America out of any competitive stance and just relegate us to a spot market situation. That we don't want to see happen.

Senator **Abdnor** Let me inrerrupt. I really didn't mean to skip over Senator Mattingly. But I know that Senator Moynihan had some questions.

Senator Byrd, would you wait for a few minutes?

Senator **Moynihan**. Mr. Chairman, I just wanted to say to the Senators of Virginia and West Virginia before they leave that we are fully cognizant of these matters you raise. We have had long hearings in the last Congress. We reported out of this committee, in December 1981 by a vote of 13 to 3, the first general port bill of its kind in the history of this committee. Then we found no consensus on the floor. So nothing happened. What I would want to say is that we are very much aware that the Europeans are looking for the kind of agreements they can make, 30-year, 40-year contracts and that if they don't have the transportation, if we don't pair with their 55-, 60-foot ports they are going to go to South Africa or Australia and we will be left a residual spot supplies as Senator Warner has said.

But I would like it to sink in on all of us that what we have contrived to do over the last years as this issue has sunk in on us is we have contrived to do nothing, nothing. The legislation has not happened. It will not pass as a set of arrangements devised for one industry or one region. It won't happen. As I said to you when we opened up, the Corps of Engineers is doing more construction in Saudi Arabia this year than it is in the United States. That is because we have failed in finding national consensus on these issues.

I think this time we are within striking distance but there has got to be give on both sides.

When we reported out a bill, we felt so good about it, 13 to 3, then found we couldn't even get it brought off the calendar.

Senator ABDNOR. Senator Mattingly, I apologize.

Senator MATTINGLY. Mr. Chairman, I didn't know whether to ask questions or make a statement.

Senator RANDOLPH. Make the statement.

STATEMENT OF HON. MACK MATTINGLY, U.S. SENATOR FROM THE STATE OF GEORGIA

Senator MATTINGLY. I would like to thank you of course for this opportunity to appear before your committee because I think this is a vital topic of trying to insure the future operation, maintenance and improvement of America's deep-draft port system, I think; the issue of general and genuine national concern as well as concern for individual States.

I think S. 865 should require a minimum of debate. I think it will minimize debate because I feel like we have got together the large ports, the medium-sized ports and the small ports and come up with a consensus which means that I think it can address Senator Moynihan's point that what happened last year won't happen this year. That in fact this general consensus now should see rapid, I feel, approval with as Senator Byrd said some minimal changes that will happen to any piece of legislation.

Sitting here listening to everybody talk about coal, our deep water ports and the gateways in which U.S. products flow into the world marketplace, grain from the Midwest, coal from West Virginia, Kentucky, and Pennsylvania, fruit and vegetables from Florida, Texas, and California, industrial machinery, consumer products from the North, East, South, and the West, peanuts, tobacco, poultry in the Southeast, virtually every part of our country, every State in the union is dependent upon the port system to move a product in an efficient and competitive fashion.

Clearly it is in the best interests of the U.S. economy as a whole that Congress move to adopt a funding mech- anism which will keep our exports viable for foreign purchasers and in turn create jobs at home. The U.S. maritime world fleet forecast points to a continuing trend toward larger, more cost efficient ocean vessels. Most of our competitors are already in the process as we know of adapting their facilities to handle these larger volume of ships as Senator Moynihan pointed out, and we on the other hand have not acted to improve our own facilities.

Mr. Chairman, I feel that unless this committee and the Congress move to adopt legislation such as proposed here today we are going to face a very real prospect of having American goods at a competitive disadvantage in a world market. Among other factors the efficient functioning of our U.S. port system is of crucial importance if we are to regain our posture in global trade and seize upon the opportunities which will present themselves as world economic recovery progresses.

There are many challenges facing our industrial and consumer products exporters in today's marketplace. There is predatory trade practices including unfair subsidies, tariff, nontariff barriers, and every other artificial device are used to undercut U.S. sales abroad. But even as we work to remove these obstacles we must also work to insure that our countries' producers will not be crippled by an outmoded system of waterborne transportation.

That concludes my statement, Mr. Chairman.

Senator **Abdnor**. Thank you, Senator Mattingly.

Again I am sorry I thought Senator Byrd was leaving and I had a question or we would have kept going.

Senator **Mattingly**. The main point I want to bring to you here, it is not old, that our exports are so important, our trade deficit is so important that Senator Hatfield is down at the White House talking about probably the budget and the deficit and the one way we can reduce the deficit is by increasing our exports and one way we can do that is by having a better port system than we currently have. This legislation addresses that issue.

Senator **Randolph**. May I comment just a second? I will not do it if it interrupts.

Senator **Abdnor**. Senator Warner never did make his own statement.

Senator **Warner**. I am going to stay here right through the morning. This is most important to me. I yield.

Senator **Randolph**. I want to underscore what Senator Mattingly has said, that this certainly is an overall subject matter from the standpoint of the production and the ultimate consumers in this shrinking world. Is that not true?

Senator **Mattingly**. That is exactly true.

Senator **Randolph**. I like what you have said. You have given a broader scope to the issue than just a State perspective, and properly so. In West Virginia, our coal counties have 35 or 40 percent unemployment, that it is something that concerns us very much. In fact, the State system as a whole now has the highest unemployment figures in the Nation. Coal, of course, in many of our counties is causing the unemployment of 30, 35 percent. But what you say is correct. We cannot separate this subject matter and I appreciate your statement.

Senator **Warner**. Senator Randolph, indeed coal, and those involved in the mining and shipping of coal, will be the primary beneficiary. But those of us who have worked on this bill for some time refer to it as the all-ports all-goods bill. And I would like to point out I am certain the committee is aware that on the House side Congressmen Whitehurst, Bateman, and Sisisky, together with Matsui of California, put in this bill.

Senator **Abdnor**. I haven't asked for Congressman Matsui's statement. He was going to be here. We will include his statement for the record. (See p. 112.)

Are there any other questions?

Senator **Warner**. I would like to add a few observations.

Senator **Abdnor**. Go right ahead.

Senator **Warner**. We have tried to coordinate the protocol of this morning here. I think we have succeeded. I have got a short statement in addition to Mr. Hatfield's statement that I think is very important and a few comments of my own.

While we dwell here this morning quite properly on the economics of this proposed piece of legislation, let's not lose sight of the national security aspects. The constitutional obligation to provide for the Nation's defense demands that the Federal Government continue its strong role in the national port system. It is a critical component of providing both our allies and our own energy needs to guard against explicit energy coercement from foreign nations. It would also blunt future intrusion by the Soviet Union and other countries in the world energy market, thereby reducing the possibility of deployment of our American troops to protect energy resources abroad, and indeed the distribution rights of those sources. The Federal role is further highlighted by our country's commitment to the construction of a 600-ship Navy to bolster our defense. The quick efficient deployment and servicing of troops and equipment must be assured by modern, well-maintained port facilities.

Mr. Chairman, now I would be glad to accommodate the committee on any questions. Mr. Hatfield dwelled at length on pages 4 and 5 about the O&M aspects of this bill. But perhaps time could be more efficiently used by allowing questions.

Senator **ABDNOR**. At this time I would like to say Senator Hatfield's statement will be made a part of the record since he is unable to be here.

Senator Moynihan?

Senator **MOYNIHAN**. I want to say to our friend from West Virginia, who has been so gracious and has, indeed, orchestrated those presentations that there would be——

Senator **WARNER**. There are two friends here. One is West Virginia and one is Virginia.

Senator **MOYNIHAN**. Virginia. That is West Virginia.

Senator **WARNER**. I would like to ask our colleagues to rejoin the State.

Senator **MOYNIHAN**. You would have to lose Robert Byrd.

Sir, it would serve no purpose if your presentation very accurately, very direct as they have been, were to not to conclude without one of us on this subcommittee making the point that there is a fundamental issue which is at stake which is whether user fees in harbor maintenance and development is based upon tonnage or based upon an ad valorem scale.

Obviously, arguments can be made both ways. I would suggest that with respect to the issue involved, tonnage is the logical basis for fee collection inasmuch as tonnage is what determines draft and what determines size of the ships, although I recognize that there is another view. But you should not go away with the impression that there is only one bill before this committee.

There are two bills. The chairman of the committee has associated himself with the bill which I put in from my brief tenure as chairman of this subcommittee, but that is when we began this work. And it was with tonnage that we were working.

We are open to any argument but we should not avoid the fact that there is as yet no consensus here. Although there is a consensus that we have to move.

Senator **WARNER**. If the distinguished Senator would yield for a moment, indeed, we are fully aware of your contribution to this legislative process and while, indeed, it is a different approach than that advocated by my colleagues and myself this morning, it deserves in every respect equal and fair consideration I am sure it will receive.

If I might return to Mr. Hatfield's statement, he addresses this point, having spoken to the ad valorem charge he states:

> This approach has numerous advantages over a tonnage approach. First it can be uniformly applied to all cargoes by a simply millage rate formula, bulk and container alike. It is a market sense of moving up or down as the value of cargo changes. The tonnage approach advocated by some belies reality of commercial margins, especially bulk commodities which are the main stay of our export market.
>
> Tonnage-based fees would be arbitrary and dramatically affect our ability to trade in these goods. On the other hand, our approach understands the conmercial market and provides for a charge that applies to all commodities that will be uniform, fair and does not interfere with commerce.

It will be a lively debate, Senator. I might at this point, Mr. Chairman, members of the committee, pay special respect to the staffs that each of us have. They have done a marvellous job and in my brief tenure in the Senate, I have not witnessed a more professional contribution to their respective members and to the Senate as a whole with their work product.

They have been joined, indeed, by, I think, a very commendable resource from the trade associations and the various ports and harbors who have expended a lot of time and energy to resolve this problem.

You, sir, Mr. Moynihan, put your finger on it. I think you said 160 or 162 years it has been.

Senator MOYNIHAN. 160 years we have had one arrangement and that arrangement, if I may say, stopped working about two decades ago. In 1954 in constant dollars, the Corps of Engineers spent $492 million on deep harbor construction. This year, sir, they are spending $75 million, constant dollars.

We are facing 20 years, it didn't work, and we have stopped working. The system is not working. That is why we are looking at it.

Senator WARNER. They are not working abroad as you point out.

Senator MOYNIHAN. There is a possibility of obviously a split fee arrangement that is neither ad valorem nor tonnage but a combination of both. I think we want to get something done this year.

Senator ABDNOR. With that, I think——

Senator RANDOLPH. I would like to question Mr. Warner.

Is that agreeable?

Senator ABDNOR. Fine, except I will point out that we must move along. We have another Senator waiting.

Senator RANDOLPH. I will just take a couple of minutes.

Senator Warner, you know that there has been congestion at the Port of Norfolk. No one knows that better than you. That, of course, means that considerable waiting time results. That demonstrates clearly the need for dredging to accommodate these larger ships so as to move cargo more efficiently. I know, Senator Warner, that you understand the problems at the Port of Norfolk.

Would you want to comment on that?

Senator WARNER. The Senator is quite correct. On the number of occasions, I personally flew over the harbor witnessing anywhere from 50 to 75, 80, 100 ships as we say in the Navy swinging on the hook idly waiting to go dockside and load.

The U.S. experienced an extraordinary demand for its coal. We were not able to meet that demand in an expeditious manner. And the world markets have not forgotten that experience. They do not wish to return to that experience again.

It is for that reason that we are gathered here today and others to put our best minds to work to work this situation out because those world markets, as Senator Moynihan said, deal in 10-, 20-, 30, 40-year contracts which can be an enormous stabilizing benefit to our economy.

Senator **RANDOLPH**. I thank you, very much.

I have seen 120 vessels backed up. Have you seen that many?

Senator **WARNER**. Senator, I have seen all kinds of numbers.

Senator **RANDOLPH**. Thank you.

Senator **ABDNOR**. Thank you, Senator Randolph and Senator Warner for your input today. We appreciate it very much. We are especially happy to give Senator Proxmire, who has been very patient, an opportunity to talk on, I assure, harbors in a little different vein. I think it pertains to the Great Lakes. It is a very important part of this country. We are anxiously awaiting to hear from you, Senator. You may proceed in any manner you care to.

STATEMENT OF HON. WILLIAM PROXMIRE, U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator **PROXMIRE**. Thank you, very much, Mr. Chairman. I am speaking today on behalf of myself and Senators Kasten, Percy, Levin, Riegle, Dixon, and Lugar in order to bring the special needs of the Great Lakes before this committee.

The views I am presenting are in agreement with the positions adopted by the Western Great Lakes Port Association and the International Association of Great Lake Ports and four Great Lakes Governors.

The problems of the Great Lakes and St. Lawrence Seaway are unique in the U.S. navigation system. Since its opening in 1959, the seaway, unlike other parts of the U.S. navigation system has been required to pay user-fees for its construction costs, including debt service and all operation and maintenance costs.

In order to explain this anomaly, I would like to briefly outline the history of the seaway in order to show how we arrived in this inequitable position.

Although the modern St. Lawrence Seaway dates back to 1959, the first major part of the regional navigation system, the all-Canadian Welland Canal, which connects Lake Erie and Ontario, was completed in 1829.

Since then the Welland has been rebuilt three times, the present canal being completed in 1932. It cost Canada $249 million to erect this 26-mile long canal which includes eight locks that are capable of handling vessels with a maximum beam of 76 feet and length of 730 feet. These dimensions set the standard for the seaway locks later built on the St. Lawrence River.

The second major navigation project that today is part of the 2,342-mile great Lakes seaway system is concentrated in the St. Marys River, connecting Lakes Superior and Huron. The first lock there was built by the State of Michigan in 1855 and later donated to the United States.

In 1885, Canada constructed a lock for $6 million which remained in operation until 1978. Between 1914 and 1969, the U.S. Army Corps of Engineers built four more locks at the Soo at a total construction cost of $53.9 million. However, unlike the locks on the St. Lawrence River, tolls have never been charged for use of these four locks at the Soo.

The first official attempt to produce a deep-draft all-water route from the head of the lakes to the Atlantic Ocean dates back to 1892, when Minnesota Congressman John Lind sponsored a congressional resolution to provide for a joint U.S.-Canadian investigation into such a project.

After protracted negotiations in 1932, the Hoover-Bennett Treaty was signed by the United States and Canada to build a seaway to a depth of 27 feet. The United States would be responsible for completing work in its national section near Niagara Falls, and the Nations would share the work and cost for the international rapids section of the St. Lawrence River. However, in 1934, when the treaty came up for a vote in the Senate, it was defeated.

Opposition to the treaty was strong, particularly from competing railroads, private utilities, the coal mining industry and east coast and gulf coast ports and it was not until 1954, that legislation introduced by my colleagues Senator Alexander Wiley, and Congressman George A. Dondero, and supported by President Eisenhower was enacted allowing the United States to share in the construction of the international section of the seaway.

The legislation included a provision that the seaway would pay its own way through joint U.S.-Canadian tolls for transit of the seaway—obviously a politically-driven concession. To date, the St. Lawrence Seaway Development Corp. has paid back nearly $65 million to the U.S. Treasury, including $37.6 million in interest and $26.8 million in bonded debt.

The approximate cost of the navigation project was just over $470 million, of which Canada paid $336.5 million and the U.S. about $133.8 million. In January 1955, the Corps of Engineers began construction of the U.S. project. In 1956, Congress approved $256.9 million for the corps to deepen Great Lakes connecting channels to 27 feet, thereby opening the port cities of the Great Lakes to deep-draft ocean commerce, turning them into true world ports.

The first joint agreement on tolls was entered into in 1954. The tolls remained at this level until 1978 when the U.S.-Canada agreement for the years 1978-81 increased the tolls by 100 percent. The tolls have been increased by another 28 percent since then.

Canadian tolls account for 71 percent of the total. Toll increases instituted since 1978 have had a major negative impact on the number of overseas vessels calling at Great Lakes ports. For example, in 1977, Milwaukee had 200 overseas vessel calls, but by 1982, only 96 international vessels called at the Port of Milwaukee. Similar declines have been experienced at other Great Lakes ports.

These large toll increases occurred, even after the Merchant Marine Act of 1970 relieved the Seaway Corp. of the requirement that it pay interest on its construction debt. Although this act also established seacoast status for the entire Great Lakes/St. Lawrence Seaway System, it fell far short of the goal of putting the Great Lakes on an equal footing with the three tidewater coasts. The seaway continued to be the only waterway in American history compelled to pay its own way, including the cost of construction.

These tolls are much higher than most of my colleagues realize. For example, we are currently paying total United States and Canadian tolls of $0.83 per metric ton on grain and $2.56 per metric ton on general cargo, whereas the approximate U.S. rate under the ad valorem fee proposed in S. 865 would be $0.04 per ton for grain and $0.85 per ton for general cargo. The U.S. share of the joint toll structure on the seaway is approximately 29 percent. Even with an ad valorem tax we would still pay Canadian tolls. Furthermore, the seaway tolls mentioned above are only tolls on cargo. Ships on the Great Lakes must also pay vessel tolls and lockage fees.

Although Congress forgave the remaining construction debt for the St. Lawrence Seaway Development Corporation in 1982, the U.S. General Accounting Office has determined that the Corporation needs a 1983 toll increase to finance deferred and planned projects.

Despite the debt forgiveness and the toll increase, the Corporation's fiscal year 1983 budgeted expenses exceed its currently projected revenue by $600,000. This deficit has caused additional deferrals of planned 1983 maintenance projects. Thus it appears we have reached the point of diminishing returns. We have increased tolls by 128 percent without any appreciable increase in revenues.

I repeat, we have increased tolls but the revenues have gone down. So it has been counter productive. Further increases will produce further declines in traffic.

Since implementation of major improvements in 1978 on the navigational control lock at Alton, Ill., the users of the Mississippi River system pay a fuel tax, but these fees are nowhere near the size of seaway tolls, nor do they cover 100 percent of operation and maintenance. Depending on Midwest origins and commodity shipped, the fuel tax paid on the Mississippi River system averages only about 15 percent of the tolls presently imposed on the seaway.

The Deep-Draft Navigation Act of 1983, S. 865, goes a long way toward upgrading the stepchild status of the Great Lakes system. S. 865 gives substantial support for the three crucial objectives to any cost recovery program acceptable to Great Lakes ports and other maritime interests, that is:

One, Federal control of waterways;

Two, a value-based, national uniform user fee; and

Three, elimination of U.S. tolls on the St. Lawrence Seaway and integration of the tolls into the nationwide system.

The bill achieves the first two objectives. It recognizes that the U.S. deep-draft navigation system did not come about by chance, but rather as a clear-cut objective to satisfy basic national economic and military needs.

The Federal interest extends not only to improving our balance of trade, but also to serving the trade needs of land-locked States and the national defense. These interests require that the Federal Government remain a viable partner in the creation of the port system.

S. 865 institutes a cost recovery system that would assist the Federal Government in funding deep-draft navigation maintenance and development. The bill does this by instituting:

One, a value-based, nationally uniform user-fee system to recover operation and maintenance costs and;

Two, a graduated local Federal matching fund for new construction projects.

The uniform aspect of O&M user charges is important to Great Lakes ports. If the charges were port specific, cost disparities could cause cargo diversions and create regional economic disruptions and even the closing of high-cost ports.

Basing the uniform fee on the value of the cargo is also a very important aspect of S. 865. The value of Great Lakes cargo varies from a few dollars a ton, for commodities such as sand, cement, coal, and iron ore, to many thousands of dollars for very high-value cargoes such as machinery, chemicals and cargoes that are moved in containers.

The higher the cargo value, the less sensitive it is to user charges. Even more importantly, in many cases, the lower value cargoes are the raw materials used by U.S. industry to manufacture finished and semifinished goods. These materials generate far greater tonnage than the high-value products, especially on the Great Lakes. A large majority of our products fall into the low volume/high weight category.

I would like to cite an example to further emphasize the importance of the ad valorem concept to the Great Lakes/St. Lawrence Seaway System. Iron ore, coal, and limestone, three relatively low-valued bulk commodities which go into steel production, make up over 77 percent of all tonnage moved on the Great Lakes/St. Lawrence Seaway System. Comparing the 16-cents tonnage charge originally suggested by a draft administration cost recovery bill to the maximum ad valorem rate proposed in S. 865 demonstrates that the flat tonnage charge would have over eight times the impact on total transportation costs of these three major Great Lakes commodities. Implementation of a user fee based strictly on tonnage would be catastrophic to all domestic and international bulk commerce.

At the Great Lakes Governors Economic Summit on May 2S, 1983, four of the six Governors signed a draft policy position on deep-draft navigation user charges. These Governors unanimously support the concept of a federally controlled uniform deep-draft user fee system for O&M contingent on concurrent elimination of seaway tolls.

S. 865, as drafted, fails to fully attain the objective contained in title I of the bill which is to—

> Integrate the operations, maintenance and improvement of the St. Lawrence Seaway and Great Lakes ports into the nationally uniform system of financing deep-draft navigation improvement projects and deep-draft commercial channel and harbor operations and maintenance cost.

Our simplified objective is "one system-one fee." However, under S. 865, the fact remains that the St. Lawrence toll system would remain intact, thereby continuing the unique status of the U.S. St. Lawrence Seaway. It would not be fully integrated into one system and, once more, the lakes would be greated differently.

The unique status granted the seaway under the bill makes it unnecessarily complicated. For this reason, I am submitting specific recommendations for changes to integrate the U.S. tolls on the seaway into the navigation system found in S. 865.

Tbese recommendations were prepared for me by the Great Lakes port directors.

I understand that such an approach may create a problem with Canada because "tolls on the St. Lawrence Seaway are negotiated on a bilateral basis * * *" I do not agree with this thesis. The 1909 treaty between the United States and Canada, which governs boundary waters, indicates that either country can establish laws and regulations governing the seaway within its own territory, providing such regulations are not inconsistent with the privilege of free navigation and are applied equally and without discrimination to both countries. In my judgment, a procedural change is all that would be required.

I particularly applaud and strongly support section 303 of the Hatfield bill, which would establish consultation between the Secretary of the State and the Government of Canada with the objective of reducing or eliminating all tolls on the International Great Lakes, including the St. Lawrence Seaway. I believe that most Canadian maritime interests ultimately would support a United States initiative to make the international seaway more competitive.

This is especially important because Canadian tolls now equal 71 percent of all seaway tolls.

Speaking now strictly for myself, not for the other Senators whose names I mentioned, let me say that I personally, strongly support S. 865 and further recommend that the suggested changes be incorporated into the act so the U.S.-St. Lawrence Seaway System be fully and equally integrated into a single U.S. navigation system.

I am cosponsoring S. 865.

[Attachments to Senator Proxmire's statement appear at pp. 115-163.]

Senator ABDNOR. Thank you, Senator.

Let me say that the committee is aware of the Great Lakes and we gave it considerable consideration last session when a port bill was discussed. I can assure you we are appreciative of your input, your information, and your views on the legislation.

Senator Moynihan?

Senator MOYNIHAN. I would just like to thank Senator Proxmire and assure him that we have some great lakes in New York, too.

Senator PROXMIRE. You certainly do. I don't mean you, I mean your statement. You are a very important shipper on the St. Lawrence Seaway. I know how important it it to you.

Senator MOYNIHAN. If you ever put a chain across it, you wouldn't be able to get out.

Senator PROXMIRE. It wouldn't surprise me if you did.

Senator MOYNIHAN. Thank you.

Senator ABDNOR. Thank you very much. We appreciate your coming.

Our next witness is from the Department of Transportation, a very important agency that we want to hear from. He is Charles

Swinburn, the Acting Assistant Secretary of Transportation for Policy and International Affairs and he is accompanied by Mr. Howard A. Watters, Deputy Administmator for Inland Waterway and Great Lakes Maritime Administration.

Gentlemen, if you will come forward, Mr. Swinburn, if you would introduce your colleagues. You may proceed. We are running a little farther behind than I hoped to be at this time. I don't want to shut anyone off, but if you would care to summarize, I assure you that your entire statement will be made a part of the record.

STATEMENT OF CHARLES SWINBURN, ACTING ASSISTANT SECRETARY OF TRANSPORTATION FOR POLICY AND INTERNATIONAL AFFAIRS, ACCOMPANIED BY HOWARD A. WATTERS, DEPUTY ADMINISTRATOR FOR INLAND WATERWAY AND GREAT LAKES MARITIME ADMINISTRATION; AND JOHN PISANI, DIRECTOR, OFFICE OF PORTS AND INTERMODAL ACTIVITIES

Mr. SWINBURN. Thank you, Mr. Chairman.

Senator ABDNOR. Introduce your colleagues for the record.

Mr. SWINBURN. I will do that. On my left is Mr. Howard Watters, Deputy Administrator of the Federal Maritime Administration, on my right is Mr. John Pisani, Director of the Office of Ports and Intermodal Activities. I will attempt to summarize my statement, Mr. Chairman.

We are pleased to be here to talk about the important port-development issues that are before your committee. You are certainly to be commended for calling this hearing to grapple with the problem that is very difficult but that may be crucial to the full development of our Nation's foreign-trade potential. I also want to commend the members of the distinguished panel that opened the hearing and their colleagues for their work and vision in the introduction of S. 865. Their bill represents a very encouraging effort to deal with the difficulties we all have been facing in developing good legislation.

I understand that work is continuing to revise further and improve S. 865. Senators Stafford and Moynihan are also to be congratulated for introducing S. 970. Both of these bills have interesting and constructive features to add to the debate.

Your letter of invitation poses several specific questions concerning port improvement, cost recovery, and S. 865 and S. 970. Let me try to answer the last two questions first, since they raise issues of general principle.

These issues have to do with the need of Federal policy that places greater financial responsibility on the user of ports and inland waterways and whether any change in current practices with regard to user charges is necessary to keep up with needed improvements on the inland waterways and deep draft port systems.

In this connection, there are two principles that are very important to the administration. First, to the maximum extent feasible, decisions on which improvement projects to carry out should be made by the economic forces of the marketplace; second, commercial interests should assume their share of the costs of maintaining the existing deep draft and inland systems and of the burden of any improvements.

By placing maximum reliance on the forces of the marketplace for making decisions on improvement projects, we reduce the chance that we will carry out unneeded or gold-plated improvements. By having users pay for the costs of both maintaining and improving the existing system, we generate a stream of new revenue that eases the pressure on the budget.

Very frankly, if we cannot generate some new revenues, we simply are not going to be able to have the kind of port modernization called for by the President in his state of the Union address. I would like to stress our belief that that would be a very unfortunate development for our economy.

I woul:d like to add, though, that there are good reasons for holding to these principles even if we did not have the urgent requirement to hold the budget in check. We should always use rigorous investment standards, and the best way to do this is by allowing marketplace forces to have the maximum influence on our decisions. Similarly, both from the point of view of fairness and in the interest of an efficient transportation system, we believe that the users of federally funded facilities or services should bear the costs of such facilities or services to the maximum extent possible in all transportation modes.

We believe that these principles of marketplace test and cost recovery should be embodied in any port modernization legislation. There are a number of ways of putting them into practice. With regard to improvements, we think the best approach would be one which recovers the cost of the improvement through levies specific to the traffic using that project. This would require local sponsors of a deepening project to give careful consideration to the effect on their future traffic of the resulting cost recovery charges.

With higher levels of cost sharing, S. 865 would meet this test. In addition, S. 865 contains clauses which permit non-Federal authorities to finance and build channel improvements under an agreement with the Secretary of the Army. Obviously, those authorities would have to be very certain that the benefits justified the cost, and a true market test would, thus, be applied. We favor this provision.

With regard to the operations and maintenance of existing channels, we note that representatives of the port industry have identified a number of problems that may arise with charges that are specific to a particular channel. In theory, it makes the best economic sense to vary operating and maintenance charges according to actual costs at particular ports. In practice, however, the current channel system, the investments in shoreside facilities and the associated traffic flows have evolved over a long period of time in an environment free of user charges.

It is important that the shift from general revenue financing to user financing of system maintenance be carried out so that any changes to existing competitive relationships among ports and port ranges are minimized. There can be no question that the continued maintenance of the current system should be financed in the least disruptive and least discriminatory manner. Thus, we would not object to recovering such costs by means of a uniform fee as is done in both S. 865 and S. 970.

The other three questions in your invitation are about the specifics of S. 865 and S. 970.

Senator **MOYNIHAN**. Would you allow me just to ask a question. You stated that S. 865 has what you call higher levels of cost sharing. I think you will find that S. 970 has the higher levels.

Mr. **SWINBURN**. That is correct, Senator. I didn't mean otherwise. Later in my testimony you will find that I speak to that.

Senator **MOYNIHAN**. Thank you. I am sorry to interrupt.

Mr. **SWINBURN**. The first question you asked about the relative merits of ad valorem and tonnage fees. Both types of taxes may have merit. The Maritime Administration is conducting an analysis of these charges to determine the relative impacts of the two types. I might note here that analysis will be done on a port specific basis. When we have this information in hand we will share it with you and with others in the Senate. It may allow us to give you a better answer on this point.

Senator **ABDNOR**. When will that be available?

Mr. **PISANI**. We are expecting that that study will be completed and available for use for this purpose in approximately a month. We will have some information that will begin to be available perhaps slightly before that in point of time.

Senator **MOYNIHAN**. Did you say a month?

Mr. **PISANI**. Yes. End of July.

Mr. **SWINBURN**. It is difficult for me to comment on the relative ease of administration of S. 865 and S. 970, since most of the questions fall outside of the purview of the Department of Transportation and I understand that the sponsors of S. 865 are receiving technical advice from the Treasury and the Justice Departments and that changes are being worked out.

You asked whether S. 865, S. 970 or some alternative is most likely to let us have early priority development of one or two 55-foot ports. In order to achieve this kind of development we must be able to focus our resources on those projects that are truly needed. For this to happen the cost recovery provisions must provide a marketplace test that is strict enough to deter marginal projects. The stream of new revenue generated by user fees must also be large enough to meet the costs of priority projects.

S. 865 provides for Federal financing of the local share of the project, with local reimbursement to the Treasury over a period of up to 50 years. This does provide a marketplace test since local authorities will probably have to charge their traffic in order to reimburse the Treasury. However with the sliding scale for local share S. 865 applies its mildest marketplace test to shallow depth projects and the most severe test to the deepest draft projects. When that feature is combined with the fairly low level of cost recovery in the bill, and the limited amount of funds available for the Federal share of improvements, it may be that available funds would not be large enough to sustain priority deep-draft projects if many other projects are also being funded.

We believe S. 865 would benefit from some adjustment both with respect to the sliding scale on local share and the overall level of cost recovery.

S. 970 provides that 75 percent of the costs of the projects with depths exceeding 45 feet must be raised by local sponsors, half provided during construction and half recovered over a period of no more than 30 years after initial operation. A cost recovery level of this magnitude would provide a stronger market test while reducing the Federal budget impact of the port development program.

Further on the question of early development of our ports, both before you, contain language designed to coordinate and speed up the approval process for improvement projects. This "fast tracking" is one necessary condition of any port development bill and would represent a significant improvement over current practices.

In conclusion, we consider enactment of a port development and cost recovery bill to be essential to our Nation's economic health. As President Reagan said in the state of the Union address, our trade position can only be improved by making our port system more efficient. Better, more active harbors translate into stable jobs in our coal fields, railroads, trucking industry, and ports.

Secretary Dole has asked me to say that she will be very pleased to work with the committee to develop the sound bill to which we can all agree so that we can get on with the important business of improving our national port system.

I thank the committee. We will be pleased to answer any questions.

Senator **ABDNOR**. Thank you, Mr. Secretary, I do have a few questions.

Senator Moynihan.

Senator **MOYNIHAN**. Would you allow me to say I am absolutely bound to leave at this point and I would like to thank the Secretary for a very clear statement, a very clear set of principles and see if we can't abide by them.

Thank you.

Senator **ABDNOR**. Thank you.

Mr. Secretary, since S. 865 provides no non-Federal up-front financing of new harbor projects, how does it provide any real market test? Can you give us your thoughts on that?

Mr. **SWINBURN**. Despite the fact that the local share of the financing in new projects is not up front there will still have to be a commitment from the local authorities, the users of the facility to pay that money back to the Treasury eventually. That is a marketplace test. We have noted that we would like to see a higher share of cost recovery in that regard. But it does seem to me that a pledge to pay that money back to the Treasury does constitute a marketplace test.

Senator **ABDNOR**. Do you believe some up front non-Federal financing is necessary for the new projects? Could you clarify that?

Mr. **SWINBURN**. I am not sure that the up front part of that is absolutely necessary. It depends upon the overall level of local participation. Certainly, a port authority or a city that pledges to pay back a rather high level of the amount of the project is going to have to start charging its users or financing very quickly after the project is completed. It will still constitute a valid marketplace test.

Senator **ABDNOR**. The up front funding is not as necessary as the long-term commitment?

Mr. **Swinburn**. I think that is correct. Obviously up front money is more immediate to the test and perhaps marginally more significant but I think it is the share in total is the most important part.

Senator **Abdnor**. Does it concern you that S. 865 permits direct appropriations in lieu of user charges toward 40 percent O&M requirement? Do you support that? It is supplemental to the 40 percent. It is a direct appropriations in lieu of user charges. Do you have any things on that?

Mr. **Swinburn**. Again, Mr. Chairman, I don't think we have any problems with the Federal share of O&M, whatever that share is going to be, to be funded by general revenues for direct appropriations. We do believe that the share to be funded by user charges would be preferable if there were a higher rate than in S. 865.

Senator **Abdnor**. Do you support the reduction of the St. Lawrence Seaway tolls as provided in 865?

Mr. **Swinburn**. If I might, Mr. Chairman, on the St. Lawrence Seaway aspects of the bill, conceptually as a package we do not have any problem, major problem with what is done in S. 865. We have a series of technical comments if you will that I would like to have the St. Lawrence Seaway write up and provide to the committee.

Senator **Abdnor**. We would appreciate that.

Let me ask you in regard to S. 865, how do you describe the way the construction credit system will work in 865? Do you believe such a system is workable?

Mr. **Swinburn**. Special credit system?

Senator **Abdnor**. Yes.

Mr. **Swinburn**. As I understand the special credit system, sir, it would essentially reimburse to the low cost ports some portion of what they had paid into the O&M fund, and assuming that they had not gotten the benefit of an equal amount of expenditures of the funds, certainly that to some extent overcomes some of the concerns of those low-cost ports and an inequity in a political sense. I am hoping in the analysis that is promised to do that it will be able to quantify some of those transfers better and be able to tell you whether or not any particular port does receive, if you will, equitable treatment for that special credit provision.

Senator **Abdnor**. We are looking forward to your study.

What is the administration's view on the designation of custom receipts for port development?

Mr. **Swinburn**. The transfer of the custom revenues I guess we view essentially as fairly equivalent to a general revenue fund provision. They are not new moneys. It has been noted they are used for a variety of purposes these days and I don't think we object to the explicit transfer of those funds to provide the Federal share of construction projects.

Again, that seems to me to be a secondary question as to how much the Federal share should be versus the local share on any new construction projects.

Senator **Abdnor**. You do see some percentage of custom receipts being used for that purpose. Is that right?

Mr. **Swinburn**. I believe so, sir. I would have to qualify my answer only slightly. It is not a subject that I have discussed with the Treasury Department.

Senator **Abdnor**. Maybe you would care to submit that in writing?

Mr. **Swinburn**. I will check with Treasury and OMB.

Senator **Abdnor**. We would be happy to have it in writing. Is the administration intending to submit its own proposal for deep-port fees and if so, when? If not, why? Are they willing to have us go ahead with it?

Mr. **Swinburn**. At the moment I believe the answer to that is no, Mr. Chairman. We are not intending to submit a bill. The administration as you know submitted legislation in the last 2 years on this subject. I think it is fair to say they got nowhere. Clearly, quite a few leaders in the Senate and in the House are paying attention to the subject. You have two bills before your committee, both sponsored by very distinguished Members of the Senate.

There is a lot of commonality between those bills. I think a limited number of subjects dividing them. It would be my judgment I believe it is shared by others within the administration that for us to submit a bill at this point would risk muddying the waters perhaps getting in the way of a compromise being developed on the legislation.

Senator **Abdnor**. The last question, what are your views as to the need for a new major port-deepening project, say 55 feet. How many harbors are needed in this country in your judgment? Have you thought about that?

Mr. **Swinburn**. I don't know that I want to tell you how many are needed, Mr. Chairman. The principle of all of this is that that should be a marketplace test. The levels of funds to be contributed by those harbors should make it a significant decision on the part of the local authorities as to whether or not to do it. There are at this point to my knowledge four harbors, ports with proposals for significant deepening in some stage or other of the process. The ones I am thinking of, I have a list somewhere, it would include Hampton Roads, Baltimore, New Orleans, and Mobile.

Senator **Abdnor**. We appreciate that. I would like to say it is very apparent from some of our hearings last year that a number of ports thought they should be made deep-water seaports. The question came up as to the need and whatever approach we use I assume you feel the revenues should be great enough to help finance these ports.

We can get carried away here.

Mr. **Swinburn**. Yes. I certainly do, Mr. Chairman. When I talk about having the marketplace test apply I certainly don't want to indicate that we do not believe some ports have got to be deepened. We share the sentiments expressed by many of the witnesses who appeared before you earlier that if we don't get some of our ports deepened they don't get the capacity to deal with these larger ships that we are going to suffer eventually in the world trade scene.

Senator **Abdnor**. Do you go so far as to say we might try to have too many? Do you foresee that happening with this legislation? Do you think the legislation is drafted so that it will take care of itself?

Mr. **Swinburn**. Both of the bills before you procedurally and in terms of the types of tests looks that will be taken at proposals I think provide for a proper type of screening of port projects. Again, however, we do believe that in order for the local authorities themselves to be able to make a national decision, there has got to be an adequate level of user financing in the local area, that is a share to be contributed to the cost to be sufficient.

Senator ABDNOR. Do you think that is written into this legislation?

Mr. SWINBURN. As I noted in my testimony, Mr. Chairman, I believe S. 865 could benefit from an increase in the local share provided. The same idea has been expressed by OMB Director Stockman in his comments.

Senator ABDNOR. Thank you. I think that covers it. We appreciate your attendance this morning and your very valuable input.

Senator ABDNOR. Our next witnesses are a panel of port directors, Mr. Shore, port director of Sacramento; Walter Abernathy, Port of Oakland; Don Welch, South Carolina State Ports Authority; and Dr. Earnest Perry, Port of Los Angeles; and James Kelly, Delaware River Port Authority.

We appreciate your patience and we know whatever we pass as legislation will greatly affect you and we, of course, would like to have your views on it.

I guess I need not tell you we are running later than we anticipated. Once, again, I would remind all of you that your entire statements will be made a part of the record and I would encourage you to highlight and summarize your statements if you can. Then, we could ask some questions.

You can proceed.

STATEMENT OF MELVIN SHORE, PORT DIRECTOR, PORT OF SACRAMENTO

Mr. SHORE. Thank you, Mr. Chairman.

My name is Melvin Shore. I am the chairman of the board of directors of the American Association of Port Authorities; as such the chief elected officer of that organization.

We appreciate the invitation to appear before you, and I have submitted a written statement for the record.

I will start off by pointing out that the port system as it exists today has developed as a partnership between the Federal Government and the local interests. Sometimes this is forgotten. The Federal Government has put out the money for dredging the channels and harbors and the local interests have put up a considerable amount of money for lands, relocations, hold harmless clauses, and port facilities.

There is evidence that this partnership has been working and working well. There is clear evidence of that in the way the local interests have met the requirements for the container and bulk cargo handling requirements of recent era. One hundred fifty-five years, from 1824 to 1979, the Federal Government has invested $4.4 billion in the deep-water port system that we have today.

In only 34 years, 1946 to 1980, local interests have invested over $5 billion compared to the Federal Government's $4.4 billion over almost five times as long a period. Furthernore, the investment by the local people will come to some $5 billion more before the end of this decade.

As a business deal it seems to me the Federal Government has more than its money's worth. The growing problem has been the lack of authorizations and funding as pointed out this morning. No project of any significance has been authorized in the last 7 years and some 30 projects are awaiting congressional approval at the present time.

In fiscal year 1983, the Corps of Engineers maintenance is running at the rate of 40 percent of their 1963 activity. All of this is taking place when cargo volumes are increasing, in fact, are projected to double by the year 2000.

In addition to that, ships are getting larger all the time. We submit that there are numerous reasons for the Federal Government to retain their responsibility.

I pointed out the fact above that this is just a good business deal. Second, the Federal Government clearly has the responsibility for international trade. Third, the Federal Government collected some $6.3 billion in 1982 in customs revenues at the ports.

In addition to that, the national defense and mobilization requirements of the Federal Government are clearly the responsibility of the Federal Government. We point out also that considerable local investment and private investment has been made in the good faith reliance on the Federal role that has been inherent up to this point.

In addition to that, the record is replete with the number of jobs and taxes generated by the port system. We also believe that it is absolutely essential that there be a streamlining of project authorization and granting permits; tbe point is that the time it takes for the request to wind its way through the process is ludicrous. The port industry as a whole believes that it is incumbent upon Congress to develop a program that will insure a modern port system by the turn of the century.

To accomplish this, definitive steps must be taken and taken now.

Discussing port development these last few years has inevitably led to cost recovery discussions. We submit that if cost recovery indeed becomes a matter of discussion, it must be equitable in all respects. The port system is a competitive system. Competition itself has proven to be extremely valuable in giving us the ability to handle the cargoes of this country at the present time.

This same competitive system has inevitably led to differences of opinion on the subject of cost recovery. However I believe I can confidently say that the points I have made above are supported by the vast majority if not indeed the entire industry.

At your request, Mr. Chairman, we have assembled a panel of experienced port executives to address the opinions on the cost recovery question.

I would like to call on Wally Abernathy, executive director of the Port of Oakland, who is here to speak for the National Coalition for Port Progress.

STATEMENT OF WALTER A. ABERNATHY, EXECUTIVE DIRECTOR, PORT OF OAKLAND

Mr. ABERNATHY. Thank you.

I am Walter Abernathy, executive director of the Port of Oakland in California and I am representing the National Coalition for Port Progress, which was formed in July of 1981 in an effort to present to Congress a unified view by our membership.

The coalition includes the ports of Long Beach, Los Angeles, Oakland, San Francisco, New Orleans, Seattle, Takoma, Stockman, Port Authority of New York, and New Jersey, the New York City Department of Ports and Terminals, the ports of Brownville, Corpus Cristi, Galveston, and Houston.

Of the more than $6 billion in annual customs revenues generated from water borne commerce, approximately 67 percent is generated at the ports from members of this coalition.

We have submitted a prepared statement which we will submit for the record. But I would like to summarize it if that is appropriate.

Senator **Abdnor**. I assure you your entire statement will be made a part of the record.

Mr. **Abernathy**. The Federal Local Navigation Port System is no longer working as has been pointed out repeatedly this morning for what we believe are two primary reasons.

One, is the inordinant and unreasonable delays in the project implementation and the second is the uncertainty concerning future funding.

I am sure the committee has heard much about the delays that it takes to implement projects in this country which is currently approximately 21 years. I am not sure the committee is aware that in Japan where they also have a nationalized system, it takes about 5 years to do what it takes us to do in 21 years.

We did a study, our coalition, did a study to see, making assumptions about what would be a reasonable fast-track system, what it should take.

We concluded that if it could be done in 7 years rather than 21, we could cut 14 years off of that delay, off the books, during that period of time the records indicate that inflation runs and costs have risen about 350 percent. So for every $3½ we spend on dredging, we could spend approximately $1 to accomplish the same results if we could move to a 7-year fast-track system.

It has been about 7 years as has been pointed out since a deep water navigation improvement project was authorized in this country. During that same period, in Japan, they have spent about $1.1 billion we understand to dredge their deep draft waterways and ports and, of course, for us on the west coast, that is our major trading partner.

In response to these two major problem areas, our coalition supports, one, a revision of the procedures by which construction projects are investigated, designed, authorized funded and constructed and a streamlining of the permit process itself; second, we support a recognition of the relationship between the Government's receipt of customs revenue and other benefits of port operation and the Government's obligation to play an active role in maintaining and improving the navigation system.

We see legislation as an important mechanism for addressing these issues and we propose for the committee's consideration the following points:

Procedural reforms to significantly reduce the time it takes to initiate and complete a project;

Two, reforms to streamline and shorten the permitting process;

Three, 100-percent Federal funding for all operation and maintenance work except as noted below; 100-percent Federal funding for all improvement projects down to a depth of 45 feet; 50-percent Federal and 50-percent local funding for improvement projects deeper than 45 feet as well as for the incremental cost of operating and maintaining those deepened channels;

Next, congressional authorization to allow local port entities to charge local user fees on shipping to cover that local share;

Finally, the devotion of a portion of the annual customs receipts for the use of the Corps of Engineers as appropriate by Congress to cover the Federal share of construction and O&M.

With respect to funding, some are saying that the local ports should now shoulder a major share of this responsibility and question why the Federal Government should continue in its historical role.

The question could be answered two ways, simply and straightforwardly:

First, ports are profit, not cost centers for the Federal Government but the Federal Government now needs to spend funds if it is going to continue profiting from the U.S. port system.

You can defer maintenance without cutting into the bottom line only so long and we are at that point.

Second, any change in this economic relationship upon which we have relied for 200 years is going to create economic disincentives, dislocations and be disruptive to trading patterns.

For all of these reasons, we recommend a firm, Federal commitment to the funding of channel maintenance and improvement projects. Because of the port systems' major role in the customs revenue that it generates, the proper form for the Federal commitment is dedication of customs revenues.

For the legitimacy of such an idea, we need to point out the 47-year-old diversion of 30 percent of customs revenues to benefit agriculture. Since 1935, more than $22 billion in customs fees has been designated for Department of Agriculture program use.

Finally, Mr. Chairman, we would like to firmly state our belief that Congress should act on the port development legislation this year so that the improvement of our commercial channels can resume and the funding of maintenance and construction work is no longer in doubt.

We recognize that others have different ideas on providing a system for funding deep draft navigation. Of the many proposals we have seen only the Moynihan bill and proposals circulated by the Corps of Engineers are concepts that approach at least a part of our position.

We cannot support any system that raises funds by the application of an ad valorem tax. We are heartened by the chairman's introduction of a water resource authorization legislation S. 947 this year. It is our hope that this committee will move expeditiously on that bill and deep draft navigation legislation specifically to resolve these issues that have stymied our continued development of our great sea port system.

Thank you, sir.

Senator ABDNOR. Thank you.

STATEMENT OF DON WELCH, RERPESENTING THE U.S. PORT SYSTEM ADVOCATES

Mr. WELCH. I have a prepared statement I would like to submit for the record.

I represent the U.S. port system advocates coalition of 55 small- and medium-sized ports. Before entering the port industry, I worked in the private sector for 16 years and had some perspective on those both public and private aspects of this problem.

First of all, I sincerely appreciate the opportunity to present our viewpoint to this comnittee. We are honored to have been included in this panel. We come with some degree of frustration. When the Federal Government's intent to recover the cost of dredging deep water channels was made known, our group came together and expressed a basic philosophical disagreement with the approach taken. It was our opinion that a modern system of seaports was indispensible to the economic and military security of our country and we also argued that annual U.S. customs receipts at ports far outweighed the annual dredging costs incurred by the U.S. Army Corps of Engineers.

It was and still is, I believe, the partnership between national and local authorities which has developed one of the finest shoreside systems in the world, and should be continued.

We believe the local interests should continue to provide shoreside facilities necessary to transfer cargo to and from vessels and the Federal Government should perform the dredging necessary to keep the shipping channels clear.

We will forever contend that our navigation channels do not exist to benefit only port communities or users but to benefit the entire Nation.

For that reason, we would prefer that no user fee system be established and to that extent we are in agreement with another coalition representing port interests. That has been and still remains our first position in the cost recovery debate.

Now, we move away and say, unfortunately, some sort of cost recovery system seems to have become a foregone conclusion in the national debate on this issue during the past 2 years. The U.S. port system advocates have not taken the position of unreasonable opposition to that.

Our group, realizing the pressing need for some new plan to fund harbor improvements, has, instead advanced and supported a uniform system of cost recovery, one that would not disadvantage any port from a competitive standpoint. Our position has been at odds with that of anotber segment of the port industry. We regret such a situation and we have tried unsuccessfully to bridge a gap founded in strong economic differences.

Today, the matter at hand is the Deep Draft Navigation Act of 1983.

Mr. Chairman, our coalition endorses tbis bill. In our studied opinion, it represents an equitable, workable solution to the cost recovery issue. It is a compromise in the best sense of the word. We applaud those not members of our coalition, especially representatives of Virginia, and Louisiana, who have developed and are supportive of this legislation.

The bill's value related tax for operation and maintenance dredging not only meets our uniform fee test, but it assesses the various classes of cargo on the ability to pay basis and in our judgment would cause the least amount of market disruption for major U.S. exports.

The local cost-sharing concept for new work should not prevent many ports from achieving justifiable ambitions insofar as channel comfigurations are concerned.

At the sane time, we will contend that this local share should be kept as low as possible as seaports are struggling to finance expensive shoreside improvements at the same time.

Finally, new sources of financing continues to be a great challenge to our industry. We also believe that the excess credit account addresses the big ports' primary objection to uniform fees and that those ports are granted a limited benefit in return for collecting fees in excess of what would be required for their own needs.

Finally, S. 865 addresses the St. Lawrence Seaway and Great Lakes port situation and moves to incorporate that fourth sea coast into the national port system.

There is an unequivocal support on the part of our coalition for this. It is one of our cornerstones of policy. We do believe that certain sections of S. 865 need refinement and perhaps clarification. We support this legislation as the best attempt yet to deal with the matter at hand.

We recommend it to you. And we hope it receives your favorable consideration.

Thank you, sir.

Senator ABDNOR. Thank you.

Mr. KELLY. Thank you, Mr. Chairman, for the opportunity to address this panel.

My name is James R. Kelly. I am the president of the Delaware River Port Authority which is a bistate agency of the States of Pennsylvania and New Jersey. We have responsibilities in developing mass transit and the construction of highway bridges across the Delaware River.

I am quite familiar with Federal funding in that our transit system, for example, was built by our own funds, about $125 million of them and we also subsidize that operation to the extent of $10 million a year.

It is very similar to what the Federal Government does in other geographic areas for local transit. On the other hand, we have bridge projects crossing the Delaware River where we are going to have to rehabilitate those projects to the extent of about $100 million in the next 3 or 4 years.

Here we are going to be looking for Federal funds. I point this out only to indicate to you that I am quite familiar with the Federal funding process. My port is one of the largest in the country, the Port of Philadelphia. We have a 40-foot channel, about 125 miles of it. We handle about 70-million tons of cargo a year.

The profile of our port is a classic example of what the partnership of the Federal Government and local interests have done in regard to ports. We have in our channel seven major oil refineries that need the deep-water navigation for the importation of their product.

We have two steel mills in our port area that require the deep-water port navigation. We have four building materials, gypsum rock, companies that are located on our channel, we have seven or eight major chemical companies, we have the navy yard, we participate in national defense.

All of these things, all of these industries are located on the river as a result of the partnership between the Federal Government and our local participation. Those companies are not just for the ports of Philadelphia. They serve the entire Nation, our oil refineries distribute oil from New England on down to the Carolinas, steel throughout the country, our chemicals are used in the fields of California for fruit growing and used in the grain fields of Kansas. So the point is that a port is not a microcosm for a local area. It is national in impact. For that reason, gentlemen, our position has always been that the Federal Government should continue to keep its responsibility, keep its promise to the local port areas in this development that has produced for the Federal Government many, many billions of dollars of income tax, many, many billions of dollars of customs receipts that have resulted from this partnership.

The O&M, operation and maintenance, is the Federal commitment, has been the Federal commitment for some 160 years. I must disagree with the distinguished Senator from New York and even my own colleagues that it doesn't work. I have just explained to you how it has worked in the past and how this O&M is still a commitment that exists and should be funded by the Federal Government without recourse to user fees.

I am in agreement with my colleagues and the Senators that new construction has been neglected and that is where the system has broken down. That is where the system has to be corrected, not what has happened in the past, but what you want to do in the future.

You are intending to create a new enterprise between the Federal Government and private industry.

Let's start there. Let's not go back and bring in O&M from the past system. We would favor user fees, uniform user fees, for new construction. We certainly favor the expedition of new construction. It is required and it will be beneficial to the Federal Government as well as to local areas. So our position and I speak not only for the Delaware River Port Authority, but I speak for all of these industries that I have mentioned that are located in our port, we do not want user fees applied to operations and maintenance as it exists today.

We are willing and we do think it is appropriate to apply user fees for new construction and to expedite that construction.

I thank you, very much, Mr. Chairman.

Senator **ABDNOR**. Thank you, Mr. Kelly.

STATEMENT OF ERNEST L. PERRY, EXECUTIVE DIRECTOR, PORT OF LOS ANGELES

Mr. PERRY. Thank you, Mr. Chairman.

My name is Ernest L. Perry. I am executive director of the Port of Los Angeles. I am here as a member of this panel representing the Los Angeles Board of Harbor Commissioners.

My remarks are also consistent with the city of Los Angeles policy as determined by the Los Angeles city council.

I appreciate the opportunity to present the views of the harbor commission and the Los Angeles Harbor Department regarding the need for new navigation improvement projects and cost recovery proposals for maintenance and improvement.

I will not dwell on the importance of ports to our national defense or our economy. I believe Mr. Shore and Mr. Abernathy did an excellent job of covering those subjects.

As stated by Mr. Abernathy, the Port of Los Angeles is a member of the port coalition that he is representing at your bearing today. I an generally in support of his position as presented. However, I believe there are a few other points that should be made which are not included in his consensus statement.

Regarding the highly controversial issue of the new buzz word, "user fees," perhaps I should begin by stating very clearly and as emphatically as possible that the Port of Los Angeles is unalterably opposed to any uniform national user fee system in any shape or form.

We consider such a fee nothing more than a tax, and the maritime industry, now struggling to recover from the prolonged recession, simply cannot absorb it. For instance, the Port of Los Angeles has not raised its wharfage rates for the past 2 years. We were considering a raise of only 10 cents per metric ton a few months ago.

However, after lengthy discussions on the critical state of the industry with steamship lines, terminal operators, importers and exporters, we decided to forgo the raise in rates at least until the end of the year. Believe me, they convinced us or we would have taken the increase.

Mr. Chairman, in your letter to Mr. Shore, you asked port representatives to address certain issues in this hearing. One was the relative merits of recovering deep-draft construction and maintenance costs through an ad valorem tax—and I note you used the word tax compared with a tonnage fee.

The ad valorem tax would very clearly discriminate against ports which handle high value cargo and would be especially costly to container carriers, who, I am sure, will protest vehemently against such treatment.

The thought of extracting ad valorem taxes from shippers who carry expensive cargoes and using those moneys for others who do not violates every principle of the American free enterprise system.

In plain language, the bottom line to such a uniform user fee would be that users of the larger, busier and more successful ports would foot the major share of the bill and subsidize all other shippers through other ports. On every level, the idea of a uniform user fee is discriminatory against some ports to the benefit of others.

Mr. Chairman, another subject you asked us to consider was "the ability of our Nation to obtain priority development of one or two 55-foot ports at an early time under the terms of $865 or $970, or alternate approaches."

Right now, one of our biggest and most important projects, the deepening of Los Angeles Harbor entrance channel to minus 65 feet—remains on hold until the necessary permits are issued.

The Los Angeles Harbor Department is prepared to spend $100 million on this project, and is eager to go. Now all we need are the permits. We are not asking financial support from anyone and do not expect to receive any. We are, however, anticipating delays on permits and need the kind of help referred to by Mr. Abernathy.

Mr. Chairman, gentlemen, the Port of Los Angeles receives no financial support from the city or State, no tax subsidy of any kind. We either earn the money we need through revenues or we do without. How, then, can we find such a project as our entrance channel deepening?

Rates and fees charged by ports vary greatly fron one port to the next, depending on tonnage, facilities, location, port administration and many other local factors.

As an example, the wharfage rate in Los Angeles is $3.90 per metric ton. The rate in gulf ports is approximately $1.25 per metric ton, and east coast ports range from $1.45 to $1.65 per metric ton. Wharfage rates in Los Angeles are higher because we have set a reasonable return on the facilities we have built, and, therefore, we are able to pay for and do our own dredging and landside development. I must add that other California ports have rates generally comparable to Los Angeles rates.

With such a wide spread of port charges, it isn't difficult to see why the Port of Los Angeles is so opposed to a uniform national user fee concept. We believe that ports should be authorized to recover, on a port by port basis, from whatever source, moneys needed for operation, maintenance and capital improvement.

There are other strong aspects to this whole situation, Mr. Chairman. The ports are not the ones who would be paying this proposed user fee. The steamship lines and shippers would. Yet, we port managers are here to express our views and would be expected to negotiate fees with someone else's money. Steamship lines and shippers are the people your committee should also be hearing from. I am sure they would offer some very strong and significant comments on adding a new tax to their current high operating expenses.

I am happy to note that on the list of people that are testifying today, you have some steamship lines.

One of the more unusual aspects of all referred to in this and other legislation is the use of minus 45 feet as a depth standard for our Nation's ports.

Mr. Chairman, I know how that figure was arrived at, and I can assure you, it is purely an arbitrary figure with no official validity, endorsement or approval by any maritime body. It is based on limited facts and no study whatever.

A group of port executives happened to bring up the subject of a standard depth while attending a meeting on other matters. Someone suggested 35 feet, another 50 feet. One of the random suggestions was 45 feet. A number of ports—especially those whose waters were not that deep—were understandably eager to accept minus 45 feet as a benchmark figure which might determine, among other things, who would pay for whose improvements.

The next step was legislation to make that dream a reality, initiated by those ports and drafted and introduced by their elected representatives. It provided for the funding of improvements and maintenance at ports less than 45 feet deep from a general fund created by a national user fee.

Thus, this random figure of minus 45 feet crept into proposed maritime legislation and has come to be regarded as a standard of our port system. There is no reason whatever to consider it a standard for anything.

If you were to ask various steamship lines as to the appropriateness of 35 feet or 45 feet or 65 feet, I suggest, Mr. Chairman, you would get various opinions depending on the drafts of the ships in their fleets.

I personally have no quarrel with the proposal, but it will have a tremendous impact on future channel maintenance costs if such an arbitrary standard is established without ecomonic justification.

Such an arbitrary standard certainly impacts upon your third question concerning "an analysis of whether the Federal Government will be able to keep pace with inland and coastal navigation needs without major changes in existing cost sharing."

I am reasonably sure that no one at this table has that type of analysis for you today. And I am also sure that the shipping industry, which in my opinion is every bit as involved in this issue as ports, has not really tried to make such an analysis. We have all been too busy trying to figure out how to get someone else to "foot the bill."

Mr. Chairman, we can understand the imposition of a user fee by individual ports as a method of financing their own dredging and maintenance projects. We truly sympathize with those ports who feel that they cannot finance such work from their own incomes. By the same token, we do not feel that the Port of Los Angeles or shippers using our port—or any other port which has structured its financial base in order to be able to pay its own way—should be obligated to finance work at other ports, some of which are direct competitors.

In all truth, I really do not have an answer that would satisfy all concerned parties, nor, I believe, does anyone else. But one thing is for certain—a uniform national user fee is not the answer.

Perhaps a part of the solution lies in the annual income derived from U.S. customs operations, and it is encouraging to hear that many legislators support that concept.

Recent figures on customs collections, and I think you have already had these, $6.5 billion in the last calendar year and I think some of this feedback into the harbors that this would cover the requirements and I think that it would be certainly beneficial to the entire Nation.

Mr. Chairman, I probably sound a little bit negative today but I don't mean to be. We have over $500 million worth of capital development underway at the present tine. We have got $110 million worth of projects under contract.

I don't believe that is negative. I hope not, because I am not by nature a negative person. If I were, I would not have recommended that our Los Angeles Board of Harbor Commissioners authorize me to set up a capital development program calling for expenditures well in excess of a half billion dollars over the next 5 years. We are into that program with over 110 million dollars' worth of work under contract. We will move on the balance if we can obtain permits in a timely fashion.

Thank you, Mr. Chairman, for this opportunity to address your distinguished committee.

Mr. **Shore**. That concludes. No doubt there could have been other shadings on the cost recovery question. We believe that the views expressed here represent the major views of the port industry.

On behalf of my colleagues I want to express our appreciation for your hearing us this morning. Thank you.

Senator **Abdnor**. I want to give our special thanks to all you gentlemen for coming all the way across the United States to testify. All of you have come a considerable distance. We appreciate it. We know what we do here will have a great effect on you and your ports as well as a number of other groups.

We do have another panel of users testifying here right after you. I think you can tell from your own testimony that there is a divergence of opinion here. Mr. Perry, I say this committee almost unanimously agreed with you last session and brought forth what we felt was a good piece of legislation much along the lines you are talking about, only to have 15 or 20 holds put on it. It never saw the light of day. I know how you feel.

That is why we asked you, all of you, for your views and I must tell you and I know you know this as well as I do, we are looking at a $190 billion deficit staring us in the face. I never heard any of the Members of the Senate, while they talked about using custom fees, talking about going in debt $1 more. So it is easy to talk here. The customs fees have long gone into the general fund, something that would have to be sold to this entire Congress and some other additional dollars found somewhere. I read in the paper this morning about new taxes already being eaten up.

They are spending it already. That is where we are. I guess we have to quit kidding ourselves and admit that if we are going to go on with port development we are going to have to face up to reality. This committee has no magicians. It is not going to be an easy decision. We have a difference of opinion on two bills before us.

Let me ask you this. How many deep water ports do you think this country needs for starters? Would you make a guess at it, Mr. Perry? You people are in this business. You should know.

Mr. **Perry**. I think we probably have about what we should have right now in the way of numbers because the projections for the amount of cargo that is going to be through ports in the next several years if we can believe the projections and I think it probably has validity, they are going to at least double in the next 10, 15 years. If we eliminated the ports that we have at the present time, I don't think we would pick up that slack in say 25 or 30 percent of them although I think that there was a statement made a little earlier that something like 78 percent of the total amount of cargo that moves through or at least through custom's collections go through about 12, 15 ports.

Senator ABDNOR. Would anyone else like to make a statement?

Mr. SHORE. Yes, Mr. Chairman.

I would not only second what Mr. Perry has said but point out that this system is working very well right now. If you were to pull out of the system any serious number of ports you would find an overtaxing of the remaining ports, not only the port capability itself but also the land side access to it. You must be thinking in terms of road and rail access to these ports as well. You must be thinking in terms of access to these ports under security conditions that require mobilization.

These things are I think glossed over too frequently in some of the rhetoric. I submit that we need the system that we have now and we need to improve it.

Mr. KELLY. I described the profiles of the Port of Philadelphia. It has great deal of bulk movement in the oil, steel, building materials, chemicals, our customers, our port users, the companies that are located on our navigable channels obviously need deep water just to support what exists in our port alone. We already have deep water. So we are not looking to the Federal Government to assist us in that regard. Our lower Delaware Bay has 55 feet of water. We are presently lightering oil in that area. We now have permission from the Coast Guard to go to dry bulk such as grain and coal.

So I guess there is two ways of looking at it. One a national need for ports, deep water ports that might serve inland areas and deep water ports who have on their own system requirements for bulk cargo.

Mr. ABERNATHY. According to our notes there are approximately 190 commercial seaports in the United States. Certainly I can't speak for all of them but we have in the San Francisco Bay region tried to determine what we would need in the future, do we need new ports in our area and we have done extensive studies with all the ports coming together and in a joint effort to study that issue, using the resources, the Corps of Engineers and the Maritime Administration and in that area, I don't know if it is a microcosm that would be repeated throughout the United States but we can live with the port system we have in the bay area but it would have to be expanded and expanded considerably, about double in volume in the next 20 years.

Mr. WELCH. I don't think we have any among our membership with the possible exception of Philadelphia that has sort of a unique membership with us, they are both with us and not with us.

Now you see them, now you don't. But we have very few members that have aspirations to become superports. Most of our port members have aspirations simply to survive. That is the basis of our support of the Hatfield approach. We I believe have been a little bit more statesmanlike and a little bit more realistic than some of our colleagues, insisting that things remain as they are.

None of us, I am reasonably sure none of them, are particularly happy with the things as they are and there is a great need that we recognize and urge to the Senate, to the Congress of the United States, to recognize and move forward. We will support a reasonable approach to cost sharing and cost recovery. We have so stated.

One other comment I might like to make. It is not really very nice this time. But some of our ports are representing themselves that, "Good, we now will take care of everything." It might be interesting to know how much previous Federal investment has gone into those ports in the form of EDA grants, in the form of freeway accesses to those ports. And to now say that they don't need Federal help; and that Federal help should not be provided to any ports at all; and that we will take our own road from here—that is not very honest. Thank you, sir.

Senator **Abdnor**. Thank you.

One last question, gentlemen. We do have to move on. Are the charges which you, as port directors, levy on cargo uniform for various types of cargo or are bulk commodities charged differently?

Mr. **Shore**. I think I can answer that, Mr. Chairman. You will find that there are variations in the ratemaking that we all have in our tariffs. They do differentiate between bulk cargoes, liquid cargoes, general cargoes, and containerized cargoes many times as well. I think that would be a uniform statement throughout the industry.

Senator **Abdnor**. Thank you.

I know we can go on for hours. You are a great source of information for us. We must move along. It is twenty after twelve. We have another group to hear from. We thank you very, very much. We would like to be free to call on you for additional thoughts.

Mr. **Shore**. By all means, Mr. Chairman. We would be happy to cooperate.

Senator **Abdnor**. Our last panel is the U.S. Carriers of Cargo, Marc J. Fink, representing foreign and domestic carriers, and Mr. Park, Crowley Maritime Corp., Mr. Ryan, Lake Carriers Association, Stephan Van Dyck, Sonat Marine, and Capt. Howard Nixon, Sea-Land Industries Investments.

STATEMENT OF JACK M. PARK, VICE PRESIDENT, CROWLEY MARITIME CORP.

Mr. **Park**. Thank you, my name is Jack Park, Crowley Maritime Corp. and I am their governmental relations vice president, Mr. Chairman.

The Maritime Corp. appreciates this opportunity to express its views. My written statement which I will summarize has been submitted to the subcommittee staff.

Senator **Abdnor**. Each of your statements will be a part of the record.

Mr. **Park**. Crowley Maritime Corp. is a large maritime transportation company headquartered in San Francisco. Our testimony today may be somewhat unique because it will address the subject of port dredging from the perspective of an operator of both shallow draft barges and deep draft liners. Crowley subsidiary companies' common carrier barge services connect a contiguous United States with Alaska, Hawaii, and the Caribbean.

Contract barge services are provided worldwide. In the areas affected by the port dredging bills under consideration, the contract services include barging of petroleum products, grain, fertilizer, drilling rigs, dredging equipment, processing plants, and prebuilt buildings, bunkering and lighterage are performed in several ports. Crowley's Delta Steamship Lines using LASH container ships, passenger cargo liners, and freight bulk container ships serve all three U.S. companies and destinations in the Caribbean, Mexico, Central and South America, and West Africa.

The drafts of our barges are normally less than 20 feet, although they will occasionally excess that by 1 foot. The drafts of Delta's liners range from about 27 feet to 38 feet. Almost lost in the shuffle of the current debate on deep draft dredges is that portion of the maritime industry which is not dependent on additional dredging but relies on maintenance dredging to varying degrees depending upon the drafts of vessels and the ports serviced.

Thank you for now offering that portion of the industry this opportunity to be heard. Before discussing specific legislation, let me first say that as a general philosophy we don't feel that user fees for port dredging, operations, maintenance, or improvements are appropriate. The Federal Governmemt should continue to fund such costs as an incentive for America's trade for the enhanced value of the ports in the national defense and because of the problems in assessing user taxes equitably, a user fee, which ad valorem or tonnage is not representative of the benefits received. A barge for example requires no dredging yet the rate of taxation is the same as for deep draft ships.

This discriminates against the oceangoing tug and barge companies industry that has shown such a technological advance in the past several decades. Shippers are consignees and will really be the payers of the tax. Industry such as agriculture, which are already struggling and many of which are receiving Government subsidies will have an additional cost to pay. Either prices will rise or alternatively our products will become less competitive in the world market.

The proposed dredger user fee is one of four users fees now being considered or in existence affecting vessels. Coast Guard user fees, shallow draft user fees, and the inland waterways fuel tax scheduled to rise in October 1983 and October 1984. The aggregate of the several taxes could be especially harmful. It is conceivable for example that certain barges could be subject to all four taxes. Concerning S. 865 specifically several questions on potential problems are raised. First, an ad valorem basis for fees is an inappropriate assessment basis since weight of the vessel and its cargo and vessel design are determinants of draft, not the value of goods carried. Liner vessels would be penalized disproportionatele because the high value of commodities which they carry.

Second, determination of value of a vessel's cargo would be difficult, untimely and in some cases nearly impossible. In international trade value is normally reported only on shippers' export declarations submitted frequently by the shippers after the vessel sales. In the domestic trade, the value is not usually reported at all. Third, it is improbable that the tax could be computed and paid before a ship sails because of data collection problems and because ships sail at all hours of the day and night.

Fourth, whether a barge with a draft less than 20 feet competes with a deep draft vessel as prescribed in the bill is subject to interpretation and would require a route-by-route port-by-port and even a voyage-by-voyage determination by someone in Government as to whether it competes with the deep draft vessel. S. 970 has the assessment, but it is silent regarding the fee collection system which creates a void. The fee assessed is per ton but the kind of ton is not specified. Several kinds of tonnage measures are used in the. trade. It would be feasible to compute tonnage before sailing but it is improbable that the payment could be made before sailing without delaying the vessel.

Regarding improvements in new construction, both bills provide for fast tracking, a real plus. The quid pro quo, however, is nonFederal funding to different but significant degrees in each bill and under different dredging depth scales. The use of customs revenues proposed in S. 865 is a good idea. But they should pay the nonFederal share not the Federal share. Both bills are too vague about how and in what amounts the nonFederal share for new construction is to be computed and assessed. Will these bills increase the probability that deeper draft ports will be built?

Perhaps but the combined agreement of the Congress and non-Federal agencies will still be required in each case and Congress will still need to appropriate funds. The choice of ports to be developed may not be best but may instead represent the economic and political strength of the winning port areas.

Thank you for this opportunity. I will be pleased to try to answer questions.

Senator ABDNOR. I think we will go right ahead with the testimony and then ask questions.

STATEMENT OF STEPHEN A. VAN DYCK, PRESIDENT, SONAT MARINE, INC.

Mr. Van Dyck. Mr. Chairman, I am Stephan Van Dyck, and I am president of the Sonat Marine, headquartered in Philadelphia, and my company is the largest independent transporter of petroleum and petroleum products along the coast of the United States.

In the year just finished we carried about 235 million barrels of petroleum products for American consumers and customers. The legislation which is before this committee could have a very substantial potential impact on our company. I feel a little bit today like the fellow who got invited to lunch. When it was time to leave, they handed him the check! The way things are going with this legislation it looks like a lot of people would like to see us pay the bill. Maybe I can give you and your members a little feel for what the impact is going to be.

We have two basic philosophical views which are set forth in our written testimony which you have. In summary, they are simply this. We feel strongly that existing O&M should be paid for out of customs receipts. The many years that we have in the successful operation of the waterway system should not be disrupted by a user tax which we will demonstrate shortly is quite significant.

Second with regard to deepening, we feel port deepening should be the responsibility of the Federal Government, because the identification of beneficiaries in these particular projects is very difficult to asses. Should such user fees be essential to those projects we feel very strongly that they be assigned to the true beneficiaries of those projects and not to coastal operators who receive no benefits whatsoever.

Let me make a couple of points, if I might, for the benefit of you and your colleagues. The legislation which is being considered has been based I believe on a false premise. We hear over and over again, in conversations we have with staff mambers and other people surrounding these issues that these user costs are something that we can passthrough. That somewhere down the line the true beneficiaries of these costs will pay the freight. Our industry now and almost always has operated under an extremely competitive environment. We find it difficult always and sometimes impossible to pass along increased costs. Because all operators are paying the increased costs does not imply the system can afford it. I was quite interested in Senator Proxmire when he made his comment about what happened when user fees where applied to the Great Lakes. Maybe in that case they were higher in terms of value of cargo than some of the fees we are talking about, but the result is very clear. Great Lakes tonnage has shrunk sharply!

Maybe my own company is a good illustration of the impact of these fees. Our company last year had revenues of about $130 million. We had after tax profits of $2½ million. The year before we lost money. We have assets of over $235 million which we used to generate this $2½ million worth of profit. If you carefully calculate, which we have done under S. 970, the cost to our company would be $4.6 million. That is O&M cost recovery only. That assums that we share none of the increased cost assigned to port deepening. You don't have to think too long about this to figure out that $4½ million wipes out our profit. We are, I think, recognized in the industry as one of the most profitable and most successful companies in our industry.

We have many smaller competitors who will not be able to absorb these costs as well as we will. I think it will have a devastating impact on our industry. What this fee does in my mind is place a 3½-percent tax on the revenues of our company. We are considering on the House side of the Congress presently legislation which is designed to improve the status of the American merchant marine. I think it is generally recognized that American merchant marine is in serious financial trouble and our national security goals are in serious question. Passage of this legislation flys right in the face of these concerns. I don't see anyway in my view that this industry will be able to survive in the long term without sharply reduced tonnage capacity with the kind of users fees which are being considered.

Let's talk about the mechanical problems. We get assurances when we appear before committees and talk to staffs in private, "don't worry, we will take care of the mechanical problems of this legislation at the regulation writing stage." Let me illustrate the difficulty this legislation creates. We talk about fairness among ports. To implement this a straight tonnage fee has been proposed. This does not anticipate the fact that many cargoes are handled many times and may make many voyages.

Eighty-five percent of all coastal tonnage in this country happens to be oil. Oil is perhaps the best example. Oil of course is our specific commodity. Crude oil comes in by ship, or comes out of the ground in Texas and other States. So it is not necessarily possible to collect the fee when the oil first comes into the country or out of the ground. It then gets refined and distributed. In Philadelphia alone it is not uncommon for us to move the same barrel of oil—although we don't know it is the same oil—four or five times. We may load at two different ports within the Philadelphia area. Our vessel may sail to Providence, Boston, Portland, discharging along the way.

We make over 9,500 loadings and discharges a year. So there is a mechanical problem of collecting this tax that we think is administratively not only burdensome, we think it is maybe impossible to collect only once on each barrel. And yet this is the largest single commodity which will be subject to the tax in question.

Third, with regard to user fees and beneficiaries, our view is that we are not talking about a beneficiary fee here, we are talking about a user fee. I have already mentioned the difficulty in passing through the cost to the market, the cost of user fee to the real beneficiaries.

When we talk about port deepening I think it is essential that we look to the beneficiaries. The Jones Act trade, which is about one-third total U.S. port tonnage, will derive no benefits whatsoever from the port deepening projects. We don't have, and I wouldn't expect that we would have, a Jones Act fleet that would in any way benefit from 55-foot drafts.

The beneficiaries of this system, if you study them carefully, I think can be identified and value received assigned. Coal companies, especially the American railroads, coal exporters, foreign flag vessel operators, and receivers of the cargoes. I can see no way that either Sonat Marine, Crowley Maritime, SeaLand, or any other American company operate or benefits in any way from this deepening of our ports. Yet all of these pieces of legislation anticipate charging companies like ours, who don't require the draft, to bear a substantial burden.

Your committee has raised several questions, one of which is the ad valorem concept. It is interesting to me that this method has suddenly come before the committee and everybody is so enthusiastic about it. Interestingly enough we operate 25,000 ton oil barges up and down the coast. It is a pretty cost effective way of delivering oil. Our barge with 25,000 tons of unleaded gasoline will pay under the anticipated ad valorem concept the same port fee, the same user fee, that will two 125,000-ton coal ships. Our barge doesn't require port deepening or a lot of maintenance.

Those two coal ships are each almost 900 feet long. Each draws 55 feet and requires port deepening. So it would seem to me that the ad valorem concept creates some very substantial distortions in the marketplace. I don't see why the American consumer or Jones Act operators should be bearing a burden of a higher costs so as to ship coal to foreign countries. These projects will benefit the railroads and coal companies, not Jones Act operators.

Second, with regard to the need for the ability to develop a 55-foot port, most of the conversations talked about east coast development and perhaps gulf coast. At this time as the gentleman from Philadelphia correctly pointed out, there is a 55-foot port on the east coast. That is in the lower Delaware Bay. We have examined and spent over $1 million trying to develop a coal loading system in the lower Delaware Bay to take advantage of the existing 55-foot draft. We have written off our investment in that project because we have found that we were unable to complete the project.

We found that for a $75 million investment we could load deep draft ships to their full load lines and we could economically compete. The problem was not the economics. The problem was the railroads would not cooperate with us in the loading these vessels and we couldn't get long-term contracts from coal customers. So it seems to me that those who are interested in port deepening are passing the buck to us. Instead of the real beneficiaries assuming the responsibility and risk appropriate to the benefit they will receive, they are trying to pass the burden to Congress and nonbenefiting users like ourselves.

We appreciate the opportunity to put our views before you today. This is a difficult subject. We recognize the difficulties you face. We do feel you should hear from us who may have to pay the bill.

Senator ABDNOR. Thank you, Mr. Van Dyck. I appreciate your testimony.

STATEMENT OF GEORGE J. RYAN, PRESIDENT, LAKE CARRIERS ASSOCIATION

Mr. RYAN. Thank you. I am George Ryan, president of Lake Carriers Association, and I represent the service industry, the domestic water carriers, who carry the cargo for the midwest steel industry, our coal mines up there, grain farmers, and shippers in the construction trade.

Senator, I believe that this is absolutely the worst time for Congress to be considering increased taxes in the form of port user fees. The 1982 recession year gave particular severe hardship in the Midwest. 1983 is not showing major signs of improvement. Mining towns, particularly up in Minnesota, in the Mesabi Range had unemployment up to 50 percent and most of our urban steel cities had unemployment up to 20 percent. Today it is still at about the 17-percent level. Less than 50 percent of the Great Lakes fleet was employed last year. We are only up to about 60 percent now. The seven large steel companies, many of them in the Midwest, lost over $3 billion last year. It is important to control every cost and these user taxes are another cost burden being placed on this industry, not only in the Midwest but throughout the Nation.

Our association therefore firmly believes that no user tax legislation for O&M for deep water ports should be enacted until a congressionally sponsored economic impact study be conducted. This study must establish the level of impact on the regional and national levels, particularly on the mining, steelmaking, manufacturing, and construction industries. By so doing it will also show what impact it will have on the services industry, the carriers. Further, we say that this impact study should consider the impact of the removal of the U.S. component of the seaway tolls; that should be fully reviewed before those tolls are removed. It is very clear that removal of those tolls will have an impact on American mining and American steelmaking. Concerning the construction of new harbors and channels our members are supportive of Congress and the administration in their search for the market test for some new projects, such as the super collier ports, over 45 feet in depth. They might be required to have local funding up to 90 percent or even 100 percent in some cases while other projects with a greater Federal interest might have a lower local funding share.

In whatever waterway and port user taxes that are to enacted we ask that the principles of module equity, Federal interest, and user pay—user say be maintained.

If user taxes are to be the law of the land they should apply to all transport modes. They should apply to the railroads as well if we are to preserve the competitive balance that we require. This equity must be applied also within the water mode because of the Federal interest in our waterways and ports for flood control, irrigation, national security, defense, recreation, and the promotion of domestic as well as international commerce.

The navigation interests should not be the ones to collect the taxes for all of these Federal interests. Last as a principle as we enter this new era of user charges, user pay—user say this principle is very essential in any partnership and permits the doctrine of the market test to be truly applied.

Allow me to speak to the questions you have asked us to address. I would like to preface my remarks however with another appeal that Congress mandate an economic impact analysis to determine the level on the regional and the national level of the impact of these charges. Until these studies are complete it is difficult if not impossible to decide if ad valorem taxes are better or worse than tonnage taxes.

In principle, we see that the ad valorem tax approach has some merit since it recognizes the ability to pay principle. It helps maintain the lowest cost per unit. It requires many low cost raw materials to fabricate finished products and provides employment particularly in the Midwest. This is particularly true in the case of the iron and steel industry. It takes one ton each of iron ore, coal, and limestone to make a ton of finished steel. There is the slag byproduct that has to be transported and disposed of.

The cumulative tax of each of these components can be devastating. The tonnage tax while suitable I think for the new deep draft ports over 45 feet would lay most heavily on the carriers of bulk cargoes through our existing port system.

Therefore we would oppose a uniform tonnage tax applied to any cargo regardless of value.

Bulk cargo deserves special consideration because it is the mainstay of our domestic trade and our international trades.

I am not qualified to answer one of the other questions you posed on the administration of S. 865 or S. 970. Certainly it would be perferable to have a system which would permit existing agencies to administer these new tax laws.

Since the U.S. Customs does not collect taxes nor information on the domestic trade it would be preferable to retain the Corps of Engineers' jurisdiction over information or any collection of taxes should it occur in the domestic trade. Congress would probably authorize Customs to collect the taxes in the international trade.

Assessing the value of cargo we feel has its difficulties but it is certainly not impossible. Customs does it all the time. However I was intrigued with the comments made by Senator Moynihan who thought that a two tiered approach might be conceivable and we certainly would look forward to reviewing this with staff to determine whether a two tiered system might even be workable that would integrate a tonnage tax and an ad valorem tax.

Concerning the ability of our Nation to develop the 45-foot draft ports I must state that of course in the Great Lakes we would not benefit from that since we are limited by the draft not only in the St. Lawrence Seaway, but in the connecting channels, that is approximately 28 feet in most cases. However, we have some deep draft ports that we utilize. They happen to be in Canada. They do happen to handle ships up to 160,000 deadweight tons and many of the Lake ships do go through the Seaway to load these vessels.

We recognize—we would encourage the passage of legislation which speed up the construction of these super ports but we would not have the midwest taxpayers pay for them. These channels certainly don't differentiate between cargoes. We could forsee that they might cause major disruptions on the Midwest, perhaps shifts in where steel is made in our country, perhaps more grain going out of those ports as opposed to the Great Lakes ports.

So we think that the midwest taxpayers should not be paying for the construction of super coal ports on the east, gulf or west coasts.

In my opinion, Senator, since you asked for alternatives, I think that perhaps Congressman Biaggi offered an alternative in H.R. 1312, since it specifically addresses the development of funding in the deepwater ports in excess of 45 feet. I believe that the issue of financing these super ports doesn't have to be linked to all of the port problems we have in this country and the financing of them. We believe that separate legislation perhaps should go forward to permit the fast tracking of these major new construction projects in the super coal ports while not addressing the other issues of the ports below 45 feet.

In conclusion we do ask again that Congress authorize an economic impact study of the various user charge proposals for the operation and maintenance before enacting broad user tax collection requirements in the water transport industry.

Thank you, sir.

Senator **Abdnor**. Thank you, Mr. Ryan.

STATEMENT OF HOWARD NIXON, SEA-LAND INDUSTRIES INVESTMENTS, INC.

Mr. **Nixon**. Mr. Chairman, I am Howard Nixon and it is my pleasure to present the statement of Charles Hiltzheimer who is chairman of the board of Sea-Land Industries.

Sea-Land Industries is headquartered in Menlo Park, N.J. Our liner subsidiary, Sea-Land Service is the world's largest container transportation system. We operate 37 U.S.-flag container ships without Government subsidy and with 81,000 containers and 46,000 chassis, Sea-Land serves over 180 ports and cities in 58 countries.

While the U.S.-flag liner fleet in foreign commerce, consists of eight major companies, only a few of them are large organizations with a wide geographic scope of operations. Measuring gross sales Sea-Land's 1982 operations represented about one-third of the total

U.S.-flag share in foreign commerce. Of the total U.S.-flag fleet in foreign commerce all but about two dozen are liner ships engaged in the transport of general cargoes.

Sea-Land operates port terminals on the east, gulf, west and Alaskan coastlines, in addition to a port terminal in San Juan, Puerto Rico. In 1982 our U.S.-flag fleet made a total of 1607 ship calls at 18 different U.S. ports. With this large network of U.S. port facilities and frequent vessel calls which average about 30 per week in the U.S. ports, we have understandably closely monitored the development of the proposed deepwater user fees during the past 3 years.

Mr. Chairman, it is an undeniable fact of business life that American competitors in international trading markets must maintain a keen sense of cost competitiveness. If that basic rule is ignored by the private sector, or disregarded in public policy formulation for the sake of political expediency, the ultimate outcome would be economic harm to U.S. producers of goods and services and loss of foreign markets for American products. Our statement today is intended to bring a private sector viewpoint into the debate over user fees. We feel that the public sector port administrators at the State and local level of government and the port program administrators at the Federal level of government may have lost sight of some of the most important private sector user interests that will be impacted by the fee structure they are now negotiating.

Once the user fee structure is implemented it is the private sector shipping cargo interests that will pay the fees, not port administrators.

With respect to the three general approaches on deep draft user fees proposed in this Congress, Sea-Land unequivocally supports streamling or fast tracking of the process for awarding dredging permits.

We recognize the vital importance of America modernizing its physical capability to remain competitive in world trade. This is as true for deeper navigation channels as it is for new ships employing advanced technology and economies of scale. Breaking the political logjam of port modernization deserves the high priority this subcommittee has given it in the 98th Congress.

Once past this threshold of support for action on this national priority, it is essential that several basic criteria be observed in the design of a feasible political compromise. We believe the following points are relevant.

First, user fees should be equitable among user and cost related to the services provided. In the case of user fees which may be assessed against a vessel, widely used and universally accepted yardsticks for measurement are net registered tonnage, deadweight tonnage, or vessel draft.

With regard to user fees to be assigned for dredging and maintaining channels to a particular depth, any of the previously mentioned yardsticks could be used, although vessel draft coupled with the length and breadth of a vessel probably has the closest relationship to required channel dimensions, including channel depth.

The most unrealistic formula that could be used as a basis of fee assessment would be an ad valorem tax approach on the cargo.

This is so because the value of a cargo has nothing whatever to do with the channel depth that may be required to accommodate a vessel in a particular port.

The vast majority of liner vessels do not draw in excess of 35 feet and, therefore, do not normally require channel depths of 45 to 55 feet, which channels are not only more expensive to create but are also more costly to maintain.

We know that liner cargoes for U.S. import and export trade averaged a value of about $2,400 per long ton in 1982, for 53.6 million long tons of cargo and conversely, U.S. nonliner cargo for the same period totaling about some 636.7 million tons had an average value of $200 per long ton.

Clearly, then, the use of an ad valorem basis of fee assessment would place a much greater burden on liner shipping than on bulk shipping, having no valid relationship whatsoever to the need for deeper channels to accommodate deep draft vessels carrying bulk cargoes.

We urge that whatever bill the subcommittee approves precludes ad valorem basis assessment. Either vessel capacity or cargo weight—and the latter has the most positive effect upon a particular vessel's draft—should be the basis for assessing fees.

We cannot envision any circumstances where an ad valorem basis of charges would be equitable to liner cargo interests.

The second criteria to be observed is to preserve to the maximum extent feasible the longstanding Federal Government responsibility to fund deepwater port channel dredging costs. We support full Federal funding of channel depths to 45 feet.

If a sharing of costs is necessary between local and Federal governments then a sliding scale to apportion local/Federal shares is the most equitable basis of reflecting the greater expense of deeper channels.

The third criteria to be observed is the need for Federal statutory direction as to the specific formula that may be used by local authorities to assess user fees on shipping and cargo interests using their ports.

Wide latitude for local interests could lead to discrimination between liner and bulk cargoes, or against captive users resulting from existing long-term leases or proximity to the origins and destinations of cargoes.

The Federal statute should direct a fair basis of assessing fees at the local level, whether for operations and maintenance or new dredging and for mandatory as well as optional fees.

The fourth criteria is the risk of the U.S. user fees causing the diversion of U.S. origin and destination cargoes, especially containerized liner cargoes, to ports with no or lower user fees in Canada and Mexico.

Any new deepwater user fee structure that imposes an inequitably large portion of port charges on liner cargoes will drive liner cargoes away from U.S. ports to the competing ports north and south of the United States.

This risk would be greatest with an ad valorem basis of fees. S. 865 prohibits diversion to avoid user fees, but it is anybody's guess how such a vague and ambiguous prohibition could be enforced under present law.

The fifth criterion relates to the need for Government-owned vessels to bear their proportionate share of the cost of dredging.

Finally, Sea-Land favors a port-specific approach versus national averages that spread the costs to nonusers in other geographic regions. The Federal statute should also resolve whether and to what extent user fees are to be borne by the ships as distinguished from cargo interests.

Sea-Land is anxious to see that the impasse over user fees is resolved in a proper fashion that will benefit U.S. commerce. The user fee debate has overly focused on the interests of varous ports with too little attention to the cargo and shipping interests who will actually be presented with paying the new charges, the specialty liner cargo interests.

Thank you, Senator.

Senator **Abdnor**. Thank you.

STATEMENT OF MARC FINK, REPRESENTING OCEAN COMMON CARRIERS

Mr. **Fink**. Mr. Chairman, good morning. I should say, probably, good afternoon.

My name is Marc Fink and I am an attorney with the law firm of Billig, Sher, and Jones, and with me this morning is John DeVierno, who is also with our firm.

I appear here today on behalf of 10 ocean liner carriers of freight flying both U.S. and foreign flags.

We are the port users who would directly pay the fees at issue in this port development legislation.

First, I wish to make clear our general opposition to legislation which would impose fees upon port users for the dredging of harbors and channels serving oceangoing vessels. We consider that the overall benefits to the Nation which result from channel and harbor dredging of ports is so considerable in terms of facilitating exports, imports and job development that it is fully appropriate to fund these dredging activities out of general revenues.

In this regard, we note that according to the Department of Commerce, the value of goods and services in U.S. export and import commerce in 1982 constituted 22.3 percent of the gross national product. Assuming, however, that Congress, nonetheless proceeds to enact some type of a user fee system, we are strongly opposed to an ad valorem system. Ad valorem fees would tax liner vessels much more heavily than nonliner vessels and would require them to pay an inappropriate share of total fees.

To illustrate this unfairness, we estimate that liner cargo in the United States-European trades has an average value of $3,000 to $4,000 per ton. In contrast, we understand that the price of a ton of coal to be approximately $40 per ton. An ad valorem port user fee would thus tax a liner carrier, under this example, at a rate nearly 100 times as heavily as the bulk coal carrier on a per-ton basis.

Moreover, use of an ad valorem fee to recover all or even a portion of the cost for deep draft projects in excess of 40 feet is even more unfair as liner carriers would be heavily taxed for projects that are of absolutely no value to them.

Our review of congressional hearing records from recent years concerning port development and port user fees indicate a particular focus on projects to dredge harbors to depths of up to 55 feet so as to enable them to utilize a new generation of larger coal colliers. However, liner carriers and their customers are simply not in need of such port deepening projects. We are aware of no liner carrier vessel present or planned which draws as much as 40 feet of water when loaded. The larger more modern vessels presently in use draw approximately 30 feet of water when loaded. Since liner vessels do not draw as much as 40 feet of water, they should not be required to pay any fees associated with dredging to depths greater than 40 feet.

If any port user fee system is to be worthy of the name, under that system, large bulk commodity carrier vessels, the only ones in need of over 40 feet of draft should be the only class of vessels required to pay user fees for the incremental cost of dredging channels to 40-plus-foot depths.

As discussed more specifically in our prepared statement, our opposition to the tonnage based fees is not as strong as our opposition to ad valorem fees. We do have some concerns with cargo tonnage fees as well, however, and those are discussed in our statement.

Also, as noted in our statement, we favor local port fees as opposed to a uniform Federal fee if a user fee system is to be put in place.

Let me also briefly touch on the question of ease of administering an ad valorem fee system as opposed to a cargo tonnage fee system. We believe both approaches would add to the paperwork requirements of carriers and the Government. This would be particularly true if local ports are permitted to, and actually implement, different funding schemes. However, we believe it would clearly be administratively simpler to use a tonnage as opposed to an ad valorem scheme. Assistant Secretary of the Army, William Gianelli, recently noted in testimony before the House Merchant Marine Committee that a tonnage based charge was easier to administer because tonnage reporting systems were already in place. This is not necessarily true with respect to reporting cargo value; liner carriers certainly do not keep a record of the value of the cargo of their vessels.

Finally, you have asked us to comment on the ability of our Nation to obtain priorty development of one or two 55-foot draft ports. In this regard, I should first note that we are in support of the fast tracking of such port development projects and believe that the most expeditious and appropriate means to do so is through 100 percent Federal funding. Absent 100 percent Federal funding partial Federal funding coupled with local financing secured through general revenues would, in our view, be most appropriate.

I thank you for the opportunity to present this statement and we are prepared to answer any questions.

Senator **Abdnor**. Thank you.

Let me say you can see our dilemma here. We had all kinds of proposals here today. Certainly, this committee recognizes the important part you play in this and the effect it has on you.

Now it is up to us to try to figure out something that is workable. Let me tell you, we need not go on like we generally are, going to the general fund for customs revenues, as some suggested, or whether additional fees would have to be considered.

We all have to recognize the fact that it is getting worse instead of better. There is a lot of money put into this. The real dollars are getting less each year. It is not moving forward. We will have to try to come up with some answers.

We certainly need your input. You have given us a lot to think about here. I assure you, and as you well know, your written statements will be analyzed very carefully. I have lots of questions to ask. But I, too, am about an hour behind where I am supposed to be.

I would like to feel free, if we need to, to submit questions to you people in writing and say thank you very, very much for being with us today.

Senator ABDNOR. Thank you, very much. We stand adjourned.

[Whereupon, at 1 p.m., the subcommittee recessed, to reconvene at the call of the Chair.]

[Statements submitted for the record and the bills, S. 865 and S. 970 follow:]

TESTIMONY OF SENATOR JOHN W. WARNER
SENATE WATER RESOURCES SUBCOMMITTEE
SD-406
21 JUNE 1983

MR. CHAIRMAN, I WANT TO COMMEND YOU FOR THE LEADERSHIP YOU HAVE SHOWN ON PORTS LEGISLATION AND EXPRESS MY APPRECIATION FOR THE OPPORTUNITY TO TESTIFY THIS MORNING.

I WANT TO ALSO EXPRESS MY GRATITUDE TO THE RANKING MINORITY MEMBER OF THIS SUBCOMMITTEE SENATOR MOYNIHAN. ALTHOUGH SENATOR MOYNIHAN AND I DIFFER ON THE DETAILS OF THE LEGISLATION WE WANT TO SEE ENACTED, I KNOW HE SHARES MY COMMITMENT TO THE ABSOLUTE NECESSITY TO MODERNIZE OUR AMERICAN PORT SYSTEM.

THREE YEARS AGO I INTRODUCED MY FIRST PORT BILL. SUBSEQUENTLY, MORE THAN 30 OTHER BILLS WERE INTRODUCED, AND NO CONSENSUS EVOLVED. THE DEADLOCK CENTERED OVER COST-SHARING AND THE FORMULA TO PAY FOR BOTH OPERATION AND MAINTENANCE AND IMPROVEMENTS.

THE PANEL JOINING ME AT THE TABLE THIS MORNING SIGNALS THAT A CONSENSUS IS NOW EVOLVING. LAST FALL I FORMED A PARTNERSHIP WITH SENATOR ROBERT BYRD TO DRAFT A COMPROMISE BILL AND SHORTLY THEREAFTER WE COMBINED OUR EFFORTS WITH THOSE OF SENATORS HATFIELD, THURMOND, AND MATTINGLY WHO HAD THE SAME GOAL.

THIS CORE WORKING GROUP IS VERY SIGNIFICANT BECAUSE SENATOR BYRD HAD INTRODUCED SEPARATE LEGISLATION IN THE LAST CONGRESS, WHICH SOME REFERRED TO AS THE BIG PORT PROPOSAL, WHILE SENATORS HATFIELD, THURMOND, AND MATTINGLY INTRODUCED LEGISLATION KNOWN AS THE SMALL PORT PROPOSAL. NOW THIS BIPARTISAN PANEL IS UNITED BEHIND S. 865. WE HAVE DIVIDED THE EXPLANATION OF THE BILL WITH THE UNDERSTANDING THAT EACH ENDORSES THE OTHERS' TESTIMONY.

The Federal interest in a modern harbor system is two-fold: to promote America's trade potential and economic strength as well as to meet our defense commitments.

With the competitive condition of the world's shipping industry, this ports bill is for all ports at all depths and for all goods. The United States must be prepared to meet the world demand for its goods by developing a more competitive port transportation system.

Likewise, the Constitutional obligation to provide for the nation's defense demands that the Federal government continue its strong role in our national port system. It is a critical component in supplying both our Allies' and our own energy needs. It will guard against implicit and explicit energy coercion from foreign nations as well as blunt future intrusion by the Soviet Union and other countries in world energy markets, thereby reducing the possibility of deployment of American troops to protect energy sources and distribution routes.

The Federal role is further highlighted by our country's commitment to the construction of a 600-ship Navy to bolster our nation's defenses. The quick and efficient deployment and servicing of troops and equipment must be assured by modern, well-maintained harbors.

My assigned task as part of the panel this morning is to highlight the sections of S. 865 providing for navigation improvements.

-The bill does not mandate specific improvements but instead sets up a mechanism which can be used to finance and expedite harbor improvements if local harbor officials and port users choose to take advantage of the bill.

-The bill does not create a carte blanche for port improvement projects. Instead, the Federal government and local project sponsors will share the cost of navigation improvements. The local cost sharing will impose a market test that will ultimately decide which projects are built.

For example, in my own state, the Corps of Engineers designed an extensive $480 million 55 foot deepening project for the Norfolk Harbor. Faced with the bealities of cost sharing, the Virginia Port Authority is now studying two more modest options: the first would be a 50 foot outbound channel from the coal piers to the ocean channel at a cost of $40 million, and the second would be a 55 foot outbound channel only at a cost of $210.8 million.

-The local share will increase on a sliding scale as the depth of the project increases. Arbitrarily imposing a single depth as the dividing line for cost sharing percentages, as others have advocated, would not adequately reflect actual ocean shipping patterns which indicate a wide variety of depths required for all commodities.

-To pay the Federal share, customs revenues will be diverted to the Navigation Improvement Account where they will be earmarked for harbor improvements only.

-THE NATIONAL AD VALORUM FEE IS TO PAY FOR OPERATIONS AND MAINTENANCE ONLY. IT WILL NOT BE USED TO FINANCE ANY PORT IMPROVEMENT PROJECTS.

-LOCAL AUTHORITIES WILL BE GIVEN BROAD FLEXIBILITY TO RAISE PORT SPECIFIC FEES TO PAY FOR THE LOCAL SHARE OF NAVIGATION IMPROVEMENTS. AMONG THE OPTIONS ARE BONDS, STATE OR LOCAL REVENUES, AND USER FEES BASED ON TONNAGE, DRAFT OF THE SHIP, VALUE OF THE CARGO, OR A COMBINATION OF THESE FACTORS.

-THE LOCAL SHARE WILL BE REPAID OVER THE LIFE OF THE PROJECT, NOT TO EXCEED 50 YEARS.

-THE REVENUES DIVERTED TO PAY FOR THE FEDERAL SHARE OF NAVIGATION IMPROVEMENTS WILL NOT EXCEED 85% OF THE NEW REVENUES GENERATED BY THE OPERATION AND MAINTENANCE AD VALORUM FEE. FEDERAL SPENDING WILL BE RESTRICTED BY LINKING THE REVENUES RAISED BY THE NATIONAL AD VALORUM FEE FOR OPERATION AND MAINTENANCE TO THE AMOUND OF FEDERAL FUNDS AVAILABLE FOR NEW CONSTRUCTION.

MR. CHAIRMAN, WITH YOUR PERMISSION, THE GOVERNOR OF VIRGINIA AND THE HAMPTON ROADS MARITIME ASSOCOATION WOULD LIKE TO SUBMIT A STATEMENT FOR THE RECORD IN SUPPORT OF S. 865.

THANK YOU FOR YOUR ATTENTION THIS MORNING AND FOR YOUR INTEREST IN PORTS LEGISLATION.

JOHN W. WARNER
VIRGINIA

ARMED SERVICES COMMITTEE
Chairman, Strategic and Theater Nuclear Forces
Subcommittee

ENERGY AND NATURAL RESOURCES COMMITTEE
Chairman, Energy and Mineral Resources
Subcommittee

RULES AND ADMINISTRATION COMMITTEE

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United States Senate
WASHINGTON, D.C. 20510

The Honorable James S. Abdnor
Chairman
Subcommittee on Water Resources
Committee on Environment and Public Works
U. S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are letters supporting S.865 from the Governor of Virginia and the Hampton Roads Maritime Association. As indicated in my June 21 testimony, I would appreciate these letters being made a part of the official hearing record.

Thank you for your kind cooperation.

With best wishes, I am

Sincerely,

JWarner

John W. Warner

JWW:slw

Enclosures

COMMONWEALTH of VIRGINIA
Office of the Governor
Richmond 23219

Charles S. Robb
Governor

June 17, 1983

The Honorable John W. Warner
U.S. Senate
405 Russell Senate Office Building
Washington, D. C. 20515

Dear John:

I received today your letter of June 8 regarding S. 865. Given the urgent need to break the apparent deadlock in Congress on the channel dredging issue, I am particularly pleased that the Water Resources Subcommittee will begin hearings on the bill next week. Hopefully, progress can be made to meet the delayed dredging needs at Hampton Roads.

It is my view that S. 865 represents a reasoned approach to a compromise among the various interest involved in the dredging issue. The use of a combination of federal general funds, including funds derived from customs fees, and non-federal funds offers the opportunity for all ports to benefit from the receipt of federal support for port maintenance and improvements. This is clearly a superior position to that originally suggested by the Administration which relied to an excessive degree on the user fee concept, thereby understating the legitimate federal role in maintaining the Nation's ports.

I also agree that having some position statement from the Board of the Virginia Port Authority would be useful to the Subcommittee in its deliberations. Your letter has not yet reached the VPA offices although I expect that Board members will move as expeditiously as possible to repond to your suggestion.

I trust that the upcoming hearings will serve to advance efforts to reach some generally acceptable compromise on this difficult national issue. Should there be anything I can do to be of further assistance, either now or as port legislation moves through the Congress, please let me know. The efforts of you and your colleagues to break the stalemate and begin to meet our harbor improvement needs is much appreciated.

Sincerely,

Chuck

Charles S. Robb

CSR/cjos

Hampton Roads Maritime Association
INCORPORATED
228-236 E. PLUME STREET P. O. BOX 3528
NORFOLK, VIRGINIA 23514—3528
(804) 622-2639

President's E Award for
Export Service

June 20, 1983

Honorable John W. Warner, Jr.
United States Senator
421 Russell Building
Washington, D. C. 20510

Dear John:

The Hampton Roads Maritime Association supports the provisions of S.865, cited as the Deep Draft Navigation Act of 1983.

This legislation provides a reasonable mechanism to fund operation and maintenance as well as any necessary improvements to the nation's navigable waterways.

Improvements to the channels at Hampton Roads have been sought by this organization since 1969 to more efficiently serve 75 percent of the nation's coal exports. Additionally, deeper channels according to U. S. Navy officials will protect their dredging investments at the aircraft carrier piers in Norfolk and the movement of aircraft carriers through the harbor channels regardless of tide levels.

The compelling justification for improvements of Hampton Roads harbor has been duly recorded through numerous Congressional hearings over the years. Should Congress this year authorize and provide the funding mechanism for the Port of Hampton Roads project, benefits from its first phase -- a 50-foot outbound channel -- could be realized within 18 to 24 months.

Please convey our support of S.865 with the urgent request for its earliest passage in the interest of our nation's market position as a competitive coal supplier.

Sincerely yours,

IAN A. HAMILTON
President

IAH/dwp

PREPARED STATEMENT

TESTIMONY OF SENATOR ROBERT C. BYRD
ON THE DEEP DRAFT NAVIGATION ACT (S. 865)
BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

June 21,1983

Mr. Chairman, I commend you for holding these hearings. As you are well aware, the issue of port improvement policy has not been resolved after almost three years of debate. My distinguished colleagues appearing here today on this panel and I are hopeful that we are finally at a point where the Senate can move forward on this important matter.

Mr. Chairman, let me briefly explain why a Senator from West Virginia, a land-locked state with no deep-water ports, is so interested in the issue of ports. The answer is 57 billion tons of high-quality bituminous coal. West Virginia is endowed with substantial resources of metallurgical coal which are among the finest in the world, and we also have high quality steam coal reserves. These endowments have helped to make West Virginia the leading coal exporting state in the nation. Almost 50% of the U.S. coal bound for export markets comes from West Virginia coal mines.

A healthy export market is important to the people of my state because it means jobs for thousands of coal miners. But the ability of the United States to compete in the world coal market depends to a significant extent upon improvements to our deep-draft ports. Such improvements are important if we are to accommodate the large coal supercolliers which will become increasingly important to world coal trade.

The Deep-Draft Navigation Act represents a reasonable, balanced approach to the maintenance and improvement of the nation's port system. Its enactment would be a major first step in improving the competitive position of U.S. coal in the world market. The coal industry understands this very well. In fact, the National Coal Association endorsed our bill during its annual meeting last week.

Although coal exports from the U.S. are far from the record levels of 1980, economic recovery in Europe and Japan should bring an improvement in the world coal market. In fact, the Energy Information Administration has estimated that world coal trade will reach a total of 169 million tons in 1985 compared to the 1982 level of 105 million tons. It is estimated that world coal trade could expand to about 500 million tons by the year 2000.

We are all aware of the competitive challenges from other nations to important sectors of our economy, such as steel and automobiles. In the face of that intense competition, there is widespread concern that we are in danger of losing our capability to compete in many major markets in the world economy. My concern is to ensure that we act to improve the competitive position of U.S. coal in the world market.

We are facing growing competition from other coal-producing natons. Growing international coal demand can be met by other countries, such as Australia, Poland and South Africa. In addition, a number of other nations are expected to enter the world coal market, such as China and Columbia.

Currently, the United States accounts for about 28% of the export coal supply. South Africa accounts for 32%, and Australia accounts for 25%. These relative shares are expected to remain fairly constant between now and the year 2000. However, it is important to point out that the United States, in terms of the delivered cost of our coal, is the high-priced supply source. As such, we are considered to be a marginal supplier to the world market. Australia is the least-cost supplier to the Far East, and South Africa is the least-cost supplier to Western Europe.

It is important to note, in this regard, that ocean transportation costs for U.S. coal bound for Europe from the East Coast accounts for at least 15% of the delivered price. Ocean transportation costs for Australia and South Africa, on the other hand, account for 47% and about 33%, respectively, of the delivered cost to Europe. However, the delivered price of Australian and South African coals to Europe is cheaper than U.S. coal.

The major component of this price differential is higher production costs in the U.S. than for our major competitors. Although some improvement might be possible in bringing U.S. coal production costs down, there is probably little latitude in the near term for achieving such cost reductions. Inland transportation costs and ocean transportation costs, therefore, appear to be the principal targets of opportunity for reducing the price differential between U.S. coal and the coal of our competitors. It is not necessary to eliminate the differential altogether, for many importing nations attach a premium to security of supply and other factors which tend to favor the United States. It is important, however, to reduce the price differential, which in some cases has been estimated by EIA to be as high as $17 per ton. According to the Interagency Coal Export Task Force, the U.S. could achieve a stable share of the world coal market if U.S. delivered prices do not exceed the delivered price of our competitors' coal by more than 10%.

Unfortunately, the United States is in a poor position to take advantage of economies of scale available through the use of larger ships. Consider the fact that the port of Long Beach is the only port which is deeper than 50 feet. The nation's largest coal exporting port is at Hampton Roads, Virginia, through which (from 1979-82) an average of 47% of all U.S. coal, including a lot of West Virginia coal, has been shipped. However, Hampton Roads cannot accommodate ships greater than 80,000 dwt. It has been estimated by the Coal Exporters Association that the cost of shipping U.S. coal to Europe could be reduced by about 40% if we used 120,000 ton ships. But there is no coal port in the United States which can accommodate such vessels.

This should be a matter of concern in light of the Office of Technology Assessment's observation that, as a result of expected growth in coal movements and achievable economies of scale, the number of ships exceeding 100,000 dwt. will increase substantially. It is projected that supercolliers of more than 100,000 dwt. may account for 25% of the ocean transport of coal by 1985, and 44% by 1990.

There are over 30 foreign deep-water port facilities in operation or in the planning stage, which have depths of at least 50 feet. Unfortunately, we are among the minority of the world's major industrial powers with deep-water channels that cannot accommodate coal supercolliers.

If we do not take action now to deepen our ports, we may find that the United States will remain a marginal supplier of coal to the world market. Our competitors will be taking advantage of economies of scale in ocean transportation by moving their coal in supercolliers, while we will be sending coal to overseas markets in 40,000 ton ships. Mr. Chairman, there is no reason that we cannot be the world's leading coal exporter. We should take steps as soon as possible to that end!

The legislation which we propose looks to the future and contributes to an improvement in the competitive position of the United States in the world coal market. The legislation provides for cost-sharing between the federal government and non-federal interests for navigation improvement projects. The bill establishes a framework for providing funding for navigation improvement projects. The federal share of such projects will be provided by an annual transfer of a portion of customs revenues from the general fund. This approach is not without precedents. There are several existing statutory provisions which allocate specific amounts related to customs revenues through appropriations from the general fund to specific purposes. For example, each year, an amount equal to 30 percent of the annual gross receipts from customs revenues is used for the encouragement of exportation and domestic consumption of agricultural products. This provision, along with other similar statutes, is described in a memorandum prepared by the Congressional Research Service. Mr. Chairman, I submit a copy of that memorandum for the record.

There has been much talk about international trade issues and opportunities. There have been many expressions of concern about the ability of the U.S. to remain competitive in world trade. I submit that coal exports represent an important opportunity for the U.S., and that trade policy must include a recognition of the importance of coal exports. Furthermore, the success of this nation's trade policy is dependent upon the condition of our port system, for ports play a vital role in our economy as strategic elements of our national and international waterborne commerce.

In conclusion, let me point out that a recent report by the Maritime Administration has shown that the private sector and local port authorities have been moving forward with landside and related projects to expand and upgrade coal handling capacity at various ports around the nation.

It is past time for us to do our part by acting to resolve the issue of port improvement. The bill offered by my colleagues and ~~I~~ we represents a reasonable approach. It addresses the needs of both large and small ports, and complements private and other non-federal investments directed to enhancing the nation's competitiveness in the coal export market. I urge you to act positively on our proposal. Thank you.

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

March 19, 1982

TO :

FROM : Vladimir N. Pregelj
Specialist in International Trade and Finance
Economics Division

SUBJECT : Customs Duty Legislation; Customs Collections and Their Uses

This memorandum has been prepared in response to your request of March 12, 1982, for brief information on the background and development of U.S. customs legislation and customs collections, with particular focus on any specific uses of such collections.

Customs duty (i.e. tariff) legislation in the United States goes back to 1789. Besides being a common fiscal practice of the time, the levying of customs duties was for the newly established United States a matter of financial necessity. During the first post-Revolutionary decade, the financial condition of the national government was at best precarious. Realistically considered, the obvious prime source of national revenue was a duty on imports. As a scholar in the financial history of the United States put it: "By common expectation taxation was to be first applied to foreign trade; the country was by its political training averse to internal taxation; local taxes fell largely on property; export taxes were prohibited; and direct taxes could not be laid until an enumeration of the population had been finished." 1/

1/ Dewey, Davis Rich. Financial history of the United States. 12th ed. New York, Longmans Green, 1934 (reprinted: New York, Augustus M. Kelley, 1968). p. 80.

The first law that the new Congress enacted on July 4, 1789, the first day of its first session, was An Act for laying a Duty on Goods, Wares, and Merchandises imported into the United States, "necessary for the support of government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures." Although this -- the first -- tariff act of the new Republic was enacted primarily for revenue purposes, it did contain an element of protectionism as well. The Tariff Act of 1789 was followed within a few weeks by An Act to regulate the Collection of the Duties, setting up the mechanism for the administration of the customs law.

The vital importance of customs collections as the primary source of U.S. revenues for more than a century is clearly illustrated by the fact that, in general, customs receipts provided the lion's share of Federal revenues until the Civil War and still over one-half of Federal revenues until the early 20th century. During this entire period, customs collections were exceeded by internal revenue receipts only in war years, the cost of which demanded extraordinary increases in Federal revenues. After the enactment of the Revenue Acts of 1913, 1916 and 1917 (and with them the income tax), however, the share of customs receipts in Federal revenues soon fell to the level of approximately 5 percent, grew again to 15 percent by 1929 and returned to 5 percent by 1939; since World War II it has been at about 1 to 1.5 percent. Despite their present small share, customs revenues are not negligible. Customs collections for fiscal years 1976 through 1981, as reported in the Treasury Combined Statement of Receipts, Expenditures and Balances of the United States Government, were (in millions of dollars): 1976 -- $4,208.5; 1977 -- $5,287.5; 1978 -- $6,728.6; 1979 -- $7,652.0; 1980 -- $7,481.6; and 1981 -- $8,523.3.

The amount of customs collections depends primarily on two factors: the rates of duties applied to the individual dutiable imported articles, and the value (or, in the case of specific duties, the quantity) of such imports. The designation of dutiable articles and the setting of the applicable rates of duty is within the Constitutional power of the Congress. The Congress exercised this power directly until 1930, when the most recent tariff act was enacted. 2/ Since 1934, however, the power to change duty-rates has been delegated to the President. Such changes -- generally reductions -- are accomplished through negotiations with U.S. trading partners in exchange for similar concessions on their part. Consequently, the rates on most U.S. dutiable imports have been reduced in a series of negotiating rounds to a relatively small fraction of their 1930 level. The latest broad tariff-cutting agreement in 1979 called for the implementation of the reductions in eight annual stages, the third of which came into force on January 1, 1982, with five yet to come. As a result, the rate of growth of customs collections, which, in general, could be expected to follow closely that of the value of imports, will be somewhat dampened until the duty reductions have been fully staged in.

Customs collections are deposited in their entirety in the general fund of the Treasury. There are, however, several statutory provisions which allocate specific amounts, quantitatively related to customs collections, through appropriations from the general fund, to specific purposes.

Under the provisions of section 32 of P.L. 74-320 as amended (7 U.S.C. 612c), an appropriation is made each fiscal year to the Secretary of Agriculture in an amount equal to 30 percent of the gross receipts from customs duties collected during the calendar year preceding the beginning of such fiscal year (for example, in FY 1982, based on collections during calendar year 1980).

2/ The Tariff Act of 1930 represented the latest Congressional exercise of its tariff-setting power on a large scale. Changes in individual items of the tariff schedules have been frequently enacted since that time.

These monies are kept in a special fund account and may be used only for the encouragement of exportation and domestic consumption of agricultural products.

The Saltonstall-Kennedy Act [section 2 of P.L. 76-393 as amended (most recently by section 210 of the American Fisheries Promotion Act; 94 Stat. 3287); 15 U.S.C. 713c-3] requires the Secretary of Agriculture to transfer to the Secretary of Commerce from the fund appropriated under section 32 an amount equal to 30 percent of the gross receipts from customs duties collected on fishery products. These monies are also maintained in a special fund account and are used for grants to fisheries research and development projects and for the implementation of a national fisheries research and development program, as provided in the Saltonstall-Kennedy Act.

Under section 705 of the National Wool Act of 1954 (Title VII of the Agricultural Act of 1954) (7 U.S.C. 1784), an appropriation is made for each fiscal year to reimburse the Commodity Credit Corporation (CCC) for any expenditures for payments to wool producers under the National Wool Act support program. The appropriation, however, may not exceed an amount equal to 70 percent of the gross receipts from customs duties collected on wool and wool manufactures, including woolen wearing apparel, during the calendar year preceding the beginning of such fiscal year.

In FY 1981, section 32 allocation amounted to $2,553.3 million, $35.0 million of which was transferred to the Secretary of Commerce for the fisheries research and development program. The appropriation for reimbursing the CCC's National Wool Act program amounted to $34.5 million.

A similar although less precise allocation of funds related to customs collections appears in sec. 245 of the Trade Act of 1974 (19 U.S.C. 2317). In the context of trade adjustment assistance to workers, sec. 245 establishes an

"Adjustment Assistance Trust Fund" limited in its use "only to carry out the provisions of [adjustment assistance for workers] (including administrative costs)." The Trust Fund was to consist of appropriations, "out of amounts in the general fund of the Treasury attributable to the collections of customs duties not otherwise appropriated, . . . [of] such sums as may be necessary to carry out the provisions of [the program of adjustment assistance for workers]." The Trust Fund was, however, never set up since no appropriations to it were ever made or even requested. Outlays for the adjustment assistance program for workers are funded instead through direct appropriations rather than indirectly through the Trust Fund.

The rationale for bypassing the trust fund channel in practice appears to be the lack of any real need for it. The trust fund provision first appeared in the House Committee version of the trade reform legislation of 1973 (it had not been part of the Administration's 1973 trade bill), but neither the committee reports nor the floor debates on the bill provide any indication of the reason for establishing the Trust Fund in the workers' adjustment assistance program or for its connection with customs collections, nor any explanation of the fact that such a trust fund was not established also for the closely related program of adjustment assistance for firms. The funding for the latter is provided through direct appropriations, with no specific mention of customs collections.

There is in the present Congress no legislation pending that would authorize the allocation of amounts related to customs collections for any specific outlay purposes. There are, however, two legislative proposals of similar nature.

H.R. 1592, introduced by Rep. Hillis on February 3, 1981, would authorize the levying of special fees, additional to any customs duty, on imports of articles related to the causing of injury in cases where such injury from imports has resulted in adjustment assistance to workers, firms, or communities, these import fees should be used for funding the respective adjustment assistance programs. The bill would, incidentally, eliminate the connection between the Adjustment Assistance Trust Fund in the workers' program (sec. 245, discussed earlier) and customs collections, and use the fees as the primary source of monies for the Trust Fund. The legislation does not set a specific level for the fees but requires that they "be sufficient to reimburse the Federal Government for the cost . . . incurred in providing adjustment assistance benefits" under each of the three adjustment assistance programs.

H. Con. Res. 169, introduced by Rep. Lyle Williams on July 31, 1981, expresses the sense of the Congress that a 7-percent tax should be imposed on all imports, and its proceeds be appropriated to and deposited in the Federal Old-Age and Survivors Insurance Trust Fund.

The only legislative action on either of these two proposals thus far was a hearing on H.R. 1592 before the Trade Subcommittee of the House Ways and Means Committee on March 30, 1981.

sjf

STATEMENT BY SENATOR STROM THURMOND (R-S.C.) BEFORE THE SENATE SUBCOMMITTEE ON WATER RESOURCES OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, REFERENCE THE DEEP-DRAFT NAVIGATION ACT OF 1983. JUNE 21, 1983.

MR. CHAIRMAN:

I am pleased to have this opportunity to appear before the distinguished members of the Subcommittee on Water Resources to testify in support of S.865, the Deep-Draft Navigation Act of 1983. It is especially a pleasure for me to appear with this panel of my distinguished Senate colleagues (Senators Hatfield, Byrd, Warner, and Mattingly), with whom I joined in introducing this legislation earlier this year.

Mr. Chairman, since we are testifying as a panel, I will attempt to be brief, and confine my remarks to a few particular topics. However, before addressing the specific issue of the Special Credit Account, I want to express my support for this bill in its entirety. The overall theory behind this bill is solid. It transfers a significant portion of harbor costs from the general taxpayer to those who directly use the waterways, and provides mechanisms for financing improvements and expediting sorely needed new projects. On the whole, this measure is a highly desirable approach toward a new, feasible harbor maintenance and improvement system.

Mr. Chairman, you have heard testimony supporting the concept of our bill, including the need for a user fee, the rationale for making this user charge an ad valorem fee, the establishment of a trust fund, and allocation of funding from it for operation and maintenance and port improvement projects.

I believe that we have in this bill the most workable compromise yet proposed in the area of port dredging legislation. The word "compromise" is very important in this legislation, because of the many and varied interests which will be affected by any legislation dealing with port maintenance and improvement.

One of the problem areas we have encountered is the difference of interests between low-maintenance ports and high-maintenance ports. Typically, the low-maintenance ports would prefer any tax or user fee to be port-specific, so that they could enhance their competitive advantage vis-a-vis other ports, and so that user fee revenues would inure to their own benefit. The low-maintenance ports generally object to the pooling of fees to pay for maintenance at high-maintenance ports. It should be readily apparent that under such a plan, the ports which require high-maintenance would be placed at a distinct disadvantage, because, under a port-specific system, their respective operation and maintenance costs could exceed their respective revenues.

In an effort to develop an acceptable compromise between these competing interests, S.865 provides for a Special Credit Account. As it is presently contemplated, 40 percent of the costs of each port's operation and maintenance will be paid from revenues generated by the nationally uniform, ad valorem user fee. The remaining 60 percent will be paid from the Treasury general fund. This provision places all ports on an equal footing, regardless of the cost of operations and maintenance, and the amount of user fee revenues generated. In this manner, the high-maintenance ports are assured that there will not be a deficiency between costs and revenue.

The special account was created in order to provide the low-maintenance ports with an equivalent benefit. Since these ports may be required to expend less for operations and maintenance than is generated by the user fee, the Special Credit Account preserves some of the benefits naturally accruing to them.

Mr. Chairman, let me emphasize that national uniformity of the user fee is absolutely essential from our standpoint. A uniform fee will advance the interests of national defense and international trade by encouraging much needed harbor improvements and assuring a reliable program of maintenance. Our objective in imposing this user fee in a uniform manner is to essentially preserve the status quo among ports, discounting all other factors, so that all will continue to be on an equal footing with shippers, insofar as the user charge is concerned.

Mr. Chairman, the Special Credit provision of S.865 provides that a port whose user fee revenues exceed its operation and maintenance costs may have a percentage of that excess deposited in that port authority's sub-account of the Special Credit Account. Any money deposited into the Special Credit Account will be available for that particular port, or port authority, to be applied to the local share of any qualified port improvement projects. Under our bill, funds may remain in the Special Credit Account for a period of five years, at the end of which time, any funds not applied to the port's improvement projects will be transferred to the general Navigation Improvement account for all ports. In this way, the low-maintenance ports will obtain the kind of benefits which would be expected in the case of port-specific fees.

Mr. Chairman, I want to emphasize this special credit feature is one of the chief elements of the compromise presented by the Deep-Draft Navigation Act. As with all compromises, it is necessary for those on the extremes to recede somewhat from their preferred position, in order that a satisfactory solution may be reached to best serve the national interest.

I believe this bill presents the most workable and desirable approach to the difficult question of cost-sharing for port-dredging. If we are to have a viable port-dredging program in future years, I believe we must accept the cost-sharing concept, with the user fee being the most logical means of raising the necessary funds. Acceptance of this compromise will make it possible for our Nation to properly maintain and improve the ports which are so necessary to international commerce.

Mr. Chairman, I thank you for allowing me this opportunity to testify in support of this bill and to discuss in some detail the Special Credit Account feature of the legislation we have proposed.

STATEMENT OF SENATOR MACK MATTINGLY
HEARINGS OF THE SUBCOMMITTEE ON WATER RESOURCES
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
ON S. 865

JUNE 21, 1983

MR. CHAIRMAN:

THANK YOU FOR THIS OPPORTUNITY TO APPEAR BEFORE THE SUBCOMMITTEE TODAY ON THE VITAL TOPIC OF ENSURING THE FUTURE OPERATION, MAINTENANCE AND IMPROVEMENT OF AMERICA'S DEEP DRAFT SYSTEM. THIS IS AN ISSUE OF GENUINE NATIONAL CONCERN, AND ONE WHICH EACH OF US SHOULD ADDRESS IN AN ATMOSPHERE FREE FROM PAROCHIAL OR REGIONAL PARTISANSHIP.

OUR DEEP-WATER PORTS ARE THE GATEWAYS THROUGH WHICH U.S. GOODS FLOW INTO THE WORLD MARKETPLACE... GRAIN FROM THE MIDWEST; COAL FROM WEST VIRGINIA, KENTUCKY AND PENNSYLVANIA; FRUIT AND VEGATABLES FROM FLORIDA, TEXAS AND CALIFORNIA; INDUSTRIAL MACHINERY AND CONSUMER PRODUCTS FROM NORTH, EAST, SOUTH AND WEST; AND YES, PEANUTS, TOBACCO AND POULTRY FROM THE SOUTHEAST. VIRTUALLY EVERY PART OF EVERY STATE IN THE UNION IS DEPENDENT UPON THE PORT SYSTEM TO MOVE OUR EXPORT PRODUCTS IN AN EFFICIENT, COMPETITIVE FASHION. CLEARLY, IT IS IN THE BEST INTEREST OF THE U.S. ECONOMY AS A WHOLE THAT

CONGRESS MOVE TO ADOPT A FUNDING MECHANISM WHICH WILL KEEP OUR EXPORTS VIABLE AND TO FOREIGN PURCHASERS. THE U.S. MARATIME ADMINISTRATION'S WORLD FLEET FORECASTS POINT TO THE CONTINUING TREND TOWARD LARGER, MORE COST EFFICIENT, OCEAN VESSELS. MOST OF OUR COMPETITORS ARE ALREADY IN THE PROCESS OF ADAPTING THEIR FACILITIES TO HANDLE THESE LARGER-VOLUME SHIPS. WE, ON THE OTHER HAND, HAVE NOT ACTED TO IMPROVE OUR FACILITIES. THERE HAVE BEEN NO NEW PROJECTS AUTHORIZED OR FUNDED IN MORE THAN SEVEN YEARS.

MR. CHAIRMAN, I FEAR THAT UNLESS THIS COMMITTEE AND THIS CONGRESS MOVE TO ADOPT LEGISLATION SUCH AS WE PROPOSE HERE TODAY, WE WILL FACE THE VERY REAL THREAT OF COMPETITIVELY DISADVANTAGING AMERICAN GOODS ON THE WORLD MARKET. AMONG OTHER FACTORS, THE EFFICIENT FUNCTIONING OF OUR U.S. PORT SYSTEM IS OF CRUCIAL IMPORTANCE IF WE ARE TO REGAIN OUR POSTURE IN GLOBAL TRADE AND TO SIEZE UPON THE COMMERCIAL OPPORTUNITIES WHICH WILL PRESENT THEMSELVES AS WORLD ECOMOMIC RECOVERY PROGRESSES.

THERE ARE MANY CHALLENGES FACING OUR INDUSTRIAL, AGRICULTURAL AND CONSUMER PRODUCT EXPORTERS IN TODAY'S MARKETPLACE. PREDATORY TRADE PRACTICES INCLUDING UNFAIR SUBSIDIES, TARIFF AND NON-TARIFF BARRIERS AND EVERY OTHER ARTIFICIAL DEVICE ARE USED TO UNDERCUT U.S. SALES ABROAD. BUT EVEN AS WE WORK TO REMOVE THESE OBSTACLES, WE MUST ALSO WORK TO ENSURE THAT OUR COUNTRY'S PRODUCERS WILL NOT BE CRIPPLED BY AN OUTMODED SYSTEM OF WATER-BORNE TRANSPORTATION.

THANK YOU, MR. CHAIRMAN.

Senator Mark O. Hatfield
Testimony before the Water Resources Subcommittee
Senate Committee on Environment and Public Works
June 21, 1983

Deep-Draft Port Users Fees and S. 865

Mr. Chairman,

We appreciate the opportunity to present for the record our views on deep-draft port user fees and specifically Senate Bill 865.

There has been some controversy over consideration of a user fee for deep-draft commercial channels and harbors. Many interests would suggest that the federal government has always paid for deep-draft operations and maintenance, and since the ports are clearly a national commercial resource, this system should continue. While we agree our ports are a national resource, I must say Mr. Chairman, in an era of $200 billion budget deficits, this attitude is short-sighted, self-serving and denies reality.

We firmly believe the user that benefits from quality ports should help defray the costs. In our bill we've recognized the national interest, and provided for partial cost recovery, only

40% TO BE BORNE BY THE USER. BUT, THIS IS A SUBSTANTIAL STEP FORWARD TO ASSURE IN THE OUT-YEARS, THAT OUR PORTS' O & M COSTS CAN BE FUNDED IN FULL.

USER FEES ARE NOT NEW. WE PAY DAILY FOR OUR USE OF FACILITIES AND EQUIPMENT. GOOD EXAMPLES ARE, THE HIGHWAY TOLLS AND THE GASOLINE TAX USER FEE AND THE AIRPORT AND AIRWAYS DEVELOPMENT USER FEE. EVEN SIMPLER THINGS LIKE STATE PARKS AND PARKING GARAGES ALL FIT INTO THIS CATEGORY. SO WHY DO WE ARGUE OVER DEEP-DRAFT USER FEES, THEY WOULD BE NO DIFFERENT?

THE REAL CONTROVERSY SHOULD SURROUND THE PROPER METHOD FOR ASSESSING SUCH A FEE. CONGRESS HAS BEEN EMBROILED IN THIS DEBATE FOR NEARLY FIVE YEARS.

LAST OCTOBER, WE STARTED A STAFF WORKING GROUP TO BREAK THIS LOGJAM AND TRY TO PUT TOGETHER A COMPROMISE BILL. S. 865 IS SUCH A BILL. AFTER YEARS OF CONTROVERSY, WE DECIDED TO APPROACH THIS TASK WITH A STRONG FOUNDATION.

WE BEGAN WITH THESE IDEAS:

-- THE USER FEE MUST BE NATIONALLY UNIFORM ACROSS ALL COMMODITIES AND ALL PORTS. PORT SPECIFIC FEES FOR O & M MUST BE REJECTED.

-- THE FEE MUST NOT CAUSE ANY DISLOCATION, DIVERSION OR LOSS OF CARGO INTO OR OUT OF THE U.S.

-- THERE SHOULD BE ONLY PARTIAL COST RECOVERY BECAUSE OF THE NATIONAL INTEREST IN KEEPING ALL PORTS OPEN. NO O & M PAYMENT CAP SHOULD BE CONSIDERED.

-- THE REVENUE FROM THE FEE MUST BE PLACED IN A TRUST FUND DEDICATED TO DEEP-DRAFT O & M.

WE ALSO DETERMINED THAT ANY BILL ON DEEP-DRAFT PORTS MUST RECOGNIZE THE DIFFICULTY INHERENT IN MOVING FORWARD WITH NEW WATER NAVIGATION PROJECTS. A SOLUTION MUST INCLUDE BOTH THE CONGRESSIONAL PROCESS AND POST- AUTHORIZATION PERMITTING.

This bi-partisan group believes we've put together a bill that meets all of these requirements, and a few more.

I would like to briefly discuss the O & M user fee.

Our approach to the fee - an *ad valorem* charge - is not new to the transportation sector, but for port cost recovery it is a slightly different twist. Our bill sets out a nationally uniform vessel charge for domestic, import and export traffic. The charge is based on the earning capacity of a vessel as measured by the value of its cargo, or *ad valorem*. A vessel carrying computer parts has a higher earning capacity than a vessel carrying sand and gravel, thus it should be charged fairly, based on that capacity.

This approach has numerous advantages over a tonnage approach. First, it can be uniformly applied to all cargos by a simple mileage rate formula, bulk and container alike. It is market sensitive, moving up or down as the value of the cargo changes.

THE TONNAGE APPROACH ADVOCATED BY SOME BELIES THE REALITY OF COMMERCIAL MARGINS, ESPECIALLY BULK COMMODITIES WHICH ARE THE MAINSTAY OF OUR EXPORT MARKET. TONNAGE BASED FEES WOULD BE ARBITRARY AND DRAMATICALLY AFFECT OUR ABILITY TO TRADE IN THESE GOODS. ON THE OTHER HAND, OUR APPROACH UNDERSTANDS THE COMMERCIAL MARGIN, AND PROVIDES FOR A CHARGE THAT APPLIES TO ALL COMMODITIES THAT IS UNIFORM, FAIR AND DOES NOT INTERFERE WITH COMMERCE.

A FEW SIMPLE EXAMPLES:

ASSUMING AN AD VALOREM CHARGE OF \$.30 PER \$1,000 OF VALUE, WHICH WOULD RAISE APPROXIMATELY 40% OF O & M (BASED ON 1980 COMMERCE FIGURES).

-- THE CHARGE ON A TON OF WHEAT WORTH \$135 PER TON WOULD BE ABOUT \$.04.

-- THE CHARGE ON A BARREL OF OIL WORTH \$30 PER BARREL WOULD BE NINE-TENTHS OF ONE CENT.

-- The charge on a container of NIKE athletic shoes (an Oregon company) worth $70,000 per container would be $21 or the equivalent of six-tenths of one cent per pair of shoes.

-- The charge on an imported car worth $8,000 would be $2.40.

-- And finally a $1,000 home computer would be charged a mere $.30.

I use these figures only to demonstrate the computation of the vessel charge.

Mr. Chairman, it is clear from these figures that American commerce should not be affected by the ad valorem approach. After consultation with the U.S. Customs Service and the Department of Treasury, we have devised a simple, easy method for making the assessment of the charge, and the subsequent collection.

A shipper will present to the master of the vessel a sworn

DECLARATION OF VALUE FOR THE CARGO BEING LOADED. THE VESSEL MASTER SHALL BE ABLE TO RELY ON THIS SWORN DECLARATION FOR PURPOSES OF THE USER CHARGE AND THE CUSTOMS SERVICE WILL THEN COLLECT THE CHARGE BASED ON THE SWORN DECLARATION. SIMPLE, DIRECT AND ADMINISTRATIVELY COST EFFECTIVE.

THE ISSUE OF THE COST OF OPERATIONS AND MAINTENANCE WAS ALSO RAISED BY THE ADMINISTRATION, SUGGESTING THAT A CAP BE PLACED ON THE O & M BENEFIT PAID BY THE FEDERAL GOVERNMENT. WE FIRMLY REJECTED THIS CONCEPT. THE NET EFFECT OF SUCH A CAP WOULD ELIMINATE THE COMMERCIAL VIABILITY OF OVER 100 PORTS ACROSS THE COUNTRY. THE CLOSURE OF THESE PORTS WOULD ALSO EFFECT THE NATIONAL INTERMODAL TRANSPORTATION SYSTEM, BY REDUCING THE NUMBER OF COMMERCIAL OPTIONS FOR THE SHIPPER. IT COULD CAUSE DESPERATE ECONOMIC DISLOCATION FOR THE STATES AND COMMUNITIES THAT RELY ON THE COMMERCE OF SUCH PORTS. SUCH A CAP WOULD CAUSE SMALLER PORTS WITH HIGHER O & M COSTS TO CHARGE PORT SPECIFIC FEES, DEFEATING THE PURPOSE OF A RATIONALLY UNIFORM O & M USER FEE. I STRONGLY URGE THE COMMITTEE TO RESIST THE TEMPTATION OF INCLUDING SUCH A CAP IN ANY USER FEE BILL.

MR. CHAIRMAN, I WILL INCLUDE FURTHER INFORMATION FOR THE RECORD, BUT FOR NOW I WILL DEFER TO MY COLLEAGUES WHO WILL ADDRESS OTHER FACETS OF THIS BILL.

THANK YOU.

OFFICE OF THE GOVERNOR
STATE CAPITOL
AUSTIN, TEXAS 78711

MARK WHITE
GOVERNOR

May 31, 1983

The Honorable Mark O. Hatfield
United States Senate
Washington, D.C. 20515

Dear Senator Hatfield:

Thank you for providing me with recent information relating to S. 865 and H.R. 2406 as they pertain to maintenance and development of deep-draft ports.

I acknowledge the significant contribution of marine commerce to the economic well-being and quality of life in all coastal states. In that regard, I feel it is essential for the Congress to develop a sound and equitable program to meet the needs of both deep-draft and shallow-draft ports. Further, I would urge you to ensure that final legislation include a well-planned transition phase that will enable our ports systems to avoid any potential problems in meeting their financial needs.

My staff here in Texas and the Texas Office of State-Federal Relations in Washington, D.C., will work closely with our Texas Congressional Delegation on all proposed developments as they are presented in the Congress. I am certain you have found the Texas delegation to be receptive to your proposal.

I applaud you and the members of your staff for the excellent efforts in addressing this vital issue. Hopefully, such a combined effort will bring about positive results.

Yours truly,

Mark

Mark White
Governor of Texas

msm

U.S. Department
of Transportation
**Maritime
Administration**

Administrator

400 Seventh Street, S.W.
Washington, D.C. 20590

APR 1 1983

Honorable Mark O. Hatfield
United States Senate
Washington, D.C. 20510

Dear Senator Hatfield:

This is to respond to your March 2nd letter asking for Maritime Administration comments on the port legislation you have developed with Senators Warner, Thurmond, Mattingly, and Byrd. I understand the bill was introduced March 21, 1983, as S.865, and titled the "Deep-Draft Navigation Act of 1983."

The concepts in your legislation appear to provide a basis for compromise, recognizing current Federal fiscal constraints. They also provide the assurance of port maintenance and a framework for authorizing much needed deep draft improvements.

Passage of legislation to maintain and improve our Nation's ports will enhance our international trade position and improve our national security. The fast-tracking of the planning, permitting, and authorization processess would go a long way towards assuring that port improvements can proceed expeditiously.

I commend your leadership and that of Senators Warner, Thurmond, Mattingly, and Byrd, and I will work with the Congress to pass port improvement legislation.

Sincerely,

H. E. SHEAR
Maritime Administrator

MARIBEL CADMUS
Secretary
of the Senate

Senate Chamber
State Capitol
Salem, Oregon 97310

OREGON STATE SENATE
SALEM, OREGON
97310

May 17, 1983

Honorable Mark O. Hatfield
United States Senator
322 Hart Senate Office Building
Washington, D.C 20510

Dear Senator Hatfield:

Oregon's Sixty-second Legislative Assembly has adopted Senate Joint Memorial No. 9 relating to maritime transportation or port development projects that might be approved by Congress. The Memorial further urges Congress to follow suggested guidelines in setting any user charges. SJM 9 was introduced by the Joint Committee on Trade and Economic Development, at the request of the Oregon Public Ports Association.

As directed by the Memorial, an authenticated copy is transmitted to you.

Sincerely,

Maribel

Maribel Cadmus
Secretary of the Senate

MC:dm

Enclosure

62nd OREGON LEGISLATIVE ASSEMBLY–1983 Regular Session

Enrolled

Senate Joint Memorial 9

Sponsored by COMMITTEE ON TRADE AND ECONOMIC DEVELOPMENT (at the request of Oregon Public Ports Association)

To the Senate and House of Representatives of the United States of America, in Congress assembled:

We, your memorialists, the Sixty-second Legislative Assembly of the State of Oregon, in legislative session assembled, respectfully represent as follows:

Whereas the economy of the United States is dependent upon domestic and international trade; and

Whereas waterborne commerce plays a dominant role in foreign trade in the United States; and

Whereas the ports in the United States represent a definable industry which directly employs over 1 million persons; and

Whereas the Federal Government collects over $6 billion annually in customs duties at seaports in the United States; and

Whereas the Congress is presently discussing legislation involving shallow-draft and deep-draft user charges; and

Whereas a body of data and testimony was established during the last session of the Congress of the United States indicating the adverse regional impacts of a segmented waterway user charge proposal affecting port systems, communities which operate port facilities, as well as the overall transportation system of the United States and the national economy; and

Whereas the primary objective of any transportation or port development legislation should be to improve the nation's transportation system and to improve our position in world markets; now, therefore,

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) That the Congress of the United States is memorialized, if any legislation relating to maritime transportation or port development is enacted, to adopt legislation that shall:

(a) Maintain a vigorous, competitive transportation system;

(b) Maintain the existing maritime transportation as part of the federal waterways system with charges administered by the Federal Government;

(c) Minimize inflation, economic dislocation and unnecessary increases in fuel consumption;

(d) Minimize the impact on the ability of the United States to act competitively in world markets;

(e) Minimize shift of cargo to Canada or other foreign ports; and

(f) Minimize disruption to the relative competitive position of ports.

(2) That the Congress of the United States is further memorialized, in adopting any legislation authorizing user charges, to require that user charges:

(a) Be imposed on a partial cost recovery basis and that the level of partial recovery be determined by the results of the studies of the impact of user charges on the national economy;

(b) Be assessed on a uniform nationwide basis;

(c) Be phased in over a period of years; and

(d) Be subject to further study with regard to need, desirability and alternatives.

(3) A copy of this memorial shall be sent to the President of the United States and to each member of the Oregon Congressional Delegation.

Minnesota
Department of Transportation
Transportation Building
St. Paul, Minnesota 55155

Office of Commissioner
[illegible]

May 18, 1983

Senator Mark O. Hatfield
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Hatfield:

Governor Perpich has asked me to respond to your letter of April 22nd, requesting comments on S. 865 and H.R. 2406. Because of Minnesota's position at the heads of both the inland river and Great Lakes systems, users fees and users fee legislation are extremely important to us. The State of Minnesota and the Minnesota Department of Transportation (Mn/DOT) have developed policies which accept the concept of users fees. Our policies also express our concerns that any tax proposal not contain the potential for inequitable regional economic impact, that collected fees be dedicated to navigation projects, that fees be uniform nationwide, and that an impact study be made before taxes are initiated. Our comments on the two bills will be based on these precepts.

Both of the bills appear to recognize the needs for regional equity and uniformity in the tax structure through their use of an ad valorem base for the users fee. This type of tax would be uniform throughout the deep draft system and would have the least detrimental impact on Minnesota's economy of any of the taxes currently under legislative consideration. Both bills also prescribe dedicated trust funds which will ensure the return of the collected fees to commercial navigation projects. Mn/DOT can support these proposed actions which respond to our positions very well. Although fast tracking has not been a formal part of Mn/DOT's previous position statements, we recognize the need for change in the existing permitting system and endorse that part of the bills.

Certain elements of the bills cause us some concern. They include cost allocation, segmented fees, the status of certain projects, the timing of the recommended impact study, the level of tax, and elements of the special credit account.

One area that we feel must be addressed is the need for a cost allocation analysis. Although a major share of Corps of Engineers deep draft expenditures can be legitimately charged to commercial navigation there are others, such as small boat harbors or museums and observation areas, which cannot. It is our contention that before taxes can be levied on commercial navigation, such non-commercial costs must be removed from the costs proposed for recovery.

An Equal Opportunity Employer

In 1982, Mn/DOT completed an analysis of probable impacts on the state from different levels of cost recovery and certain kinds of taxes. The study demonstrated that a segment specific users fee could very well mean the end of shipping from Minnesota's Great Lakes ports. Although these bills appear to eliminate segmentized fees through the structure of the proposed tax assessment and collection and the definitions of taxable cargo, we would stress the importance of keeping that condition during committee review. The current wording in Section 4232 and in Section 102(a)(8) could lead to segmented charges on the Great Lakes unless careful consideration is given to that problem.

Mn/DOT has an interest in the Duluth-Superior harbor improvement project which would increase the effective capacity of the harbor. The project, which was delayed by extensive dredged material disposal analysis, is currently being reviewed by the various federal agencies. Legislation should consider such projects and the need for grandfathering in not only those described in Section 102(a)(5), but those which are in advanced planning stages. In that same line of thought, the potential for local matching to be made through land grants, easements, or rights of way must be strengthened in Section 401(c)(3).

In Section 403 of Congressman Matsui's bill, there is direction for a three year study of impacts after implementation. We would prefer a pre-tax study; however, we recognize that any study is better than none. It appears that a two rather than three year study could very well determine significant impacts at an early stage which would allow for discontinuance of the tax before it reached the maximum.

It has been our position, one which follows the policy of the National Governor's Association and the Council of Upper Great Lakes Governors, that there should be a ceiling of 25% on cost recovery for operations and maintenance. The tax should be phased in annual increments of no more than 5% to reduce economic impact. Although the bills propose levels of tax and increments much greater than our position, the uniformity assured by an ad valorem tax might mitigate some of the impact and reduce the possibility of modal, port or source diversion.

In the discussion of the special credit account, Section 201(d)(3)(C)(iii) and in 102(a)(16) the definition of qualified port authority could exclude the Port of Two Harbors, Minnesota, as they are written. Two Harbors has, prior to the current recession, shipped an average of 12 million tons of iron ore concentrate a year. Using an estimated value of $32 a ton and applying a cap of .06% as the ad valorem tax, that tonnage would generate over $230 thousand a year. Since the port requires less than $20 thousand a year in Corps of Engineers (COE) expendiitures, it would seem to be a candidate for reimbursement. However, there is no structured organization or person extant that would qualify as a port authority under the bills' definition.

Thank you for the opportunity to offer comments on these very important bills. If we can provide further input, please do not hesitate to ask.

Sincerely,

Richard P. Braun
Commissioner

cc:
Governor Perpich

NERCO INC.
111 S.W. COLUMBIA, SUITE 800
PORTLAND, OREGON 97201
TELECOPIER 503-241-2819
TELEPHONE 503-796-6600

WILLIAM W. LYONS, *VICE PRESIDENT*

NERCO

February 16, 1983

The Honorable Mark O. Hatfield
United States Senate
Washington, D.C. 20510

Attention: Jeff Arnold

Dear Senator Hatfield:

We are extremely encouraged by our discussions with your staff about the emerging outline of new port development legislation. NERCO commends you for continuing to seek a solution to this thorny national problem and for your attention to Oregon's interests, including our coal export project at Astoria.

NERCO's basic position is that requiring a local share for new construction is fully justified and acceptable if all O&M costs (both existing and incremental due to new construction) are absorbed nationally. This will insure that new projects meet an economic test yet preserve the national character of the port and transportation system. The tradeoff we believe makes most sense is a greater responsibility at the local level for new construction combined with continued responsibility by the Federal Government for all O&M.

Secondly, but just as important, a national ad valorum tax is far superior to a tonnage tax to fund that portion of O&M not provided from general revenues.

More specifically:

1. Local ports should be afforded as much flexibility as possible in financing their portion of new construction. The following should be specifically authorized:
   a. Use of industrial development bonds for dredging.
   b. Federal loans at the government's cost of money with payback over the life of the project or 50 years.

c. One-hundred percent local funding of new construction, provided that Federal loans are also available under this option. Use of this option should eliminate Corps of Engineers' review and congressional authorization of projects.

Projects financed completely at the local level should be automatically eligible for O&M funding out of the national trust fund. The intent of this is to insure that projects which assume all construction costs in order to expedite completion should not be penalized by being subjected to a requirement for congressional authorization for O&M. However, some check is needed to prevent marginal projects or projects with low construction costs relative to O&M costs from swamping the O&M trust fund without governmental review. Thus, a threshhold should be established above which congressional approval would be required for O&M for specific new projects. One possible formula: congressional authorization for O&M required if annual O&M costs would exceed 15 percent of total construction costs, or when funding O&M from the national trust fund would result in an increase in the ad valorum tax of more than 5 percent.

Placing a per-ton cap on incremental O&M, as proposed by the Corps of Engineers, could have a perverse effect on construction of new coal ports. Tonnages exported in the early years of a new project are bound to be lower than in later years, which means that a per-ton cap would penalize a new coal port at the very time it seeks to gain a foothold in the market.

The better way to control growth of O&M requirements is through congressional review of projects which exceed a threshhold of O&M-to-construction costs or would raise the ad valorum tax beyond a threshhold amount. Trust fund coverage of O&M which does not exceed these threshholds should be automatic, both for congressionally-authorized projects and for projects funded 100 percent locally.

2. The local share of new construction should not be graduated, as the Corps of Engineers proposes, so that a greater local share is required for deeper channel depths. The rationale given for this scheme is that deeper channels serve more narrow interests and more easily identified beneficiaries than shallower draft channels. However, from the perspective of the contemporary national interest, just the opposite argument can be made: to the extent that the United States is increasingly dependent upon international trade and faces a critical need to expand its exports, deeper draft channels are required. There is no rationale for assuming that all ports should be heavily subsidized to build to 40-foot depths while any port going deeper should be, relatively, penalized. At most, a simple threshhold should be used rather than a sharply graduated schedule of local share requirements; for example:

up to 40'	25% local share
deeper than 40'	50% local share

3. For purposes of authorizing channel depths and allocating local share responsibilities, channel depths should be the nominal depths required for the project, including all entrance channels. For example, a 50-foot project at Astoria should include whatever depth necessary to cross the Columbia River bar.

Sincerely,

W. W. Lyons

WWL/DVY/js

Shell Oil Company

Suite 200
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(202) 466-1410

Jess Johnson, Jr.
Vice President, Government Relations

June 8, 1983

The Honorable Mark O. Hatfield
United States Senate
Senate Hart Office Building, Suite 322
Washington, DC 20510

Dear Senator Hatfield:

In reply to your request for support of S.865 and H.R.2406, I am happy to tell you that Shell supports your bipartisan efforts to secure the future of the nation's waterborne commerce.

We appreciate the months of hard work your staffs have invested in this important issue and your thorough examination of the many interests and perspectives in order to build this workable compromise bill.

While there are sections of this legislation which we feel could be improved through clarification, we believe that the basic concept of your bills -- that of assessing fees on the users of our ports -- is the soundest and most equitable solution. Further, Shell supports the concept of imposing a user fee on all port traffic benefiting from (1) channel deepening to accommodate deep-draft vessels and (2) other services not associated with statutory or regulatory enforcement and military activity. Elimination of port subsidies through new and increased user fees will shift the burden of operating and modernizing transportation systems such as these from the general taxpayer directly onto those benefiting from these systems. Reduction of all transportation subsidies will also make competing modes more responsive to the marketplace; ultimately consumers and taxpayers will receive greater value from the most efficient modes.

In response to your request for comments, we see the following two aspects that, if clarified, would help your proposal achieve its purposes:

- If port change, expansion or dredging imposes damages on third parties, appropriate compensation should be provided.
- If the port or service is used by the Navy, Coast Guard or other federal, state or local government entity, including port authority, that entity should either pay its fair share or the user fee should be adjusted appropriately downward.

Shell plans to contact key Senators, Congressmen and customers to enlist their support of S.865 and H.R.2406 and the user fee concept as a preferred alternative to general fund subsidies. Further, we will be happy to discuss additional ways in which we can be of assistance in supporting this concept. We wish you success in your effort to enact these proposals into law.

Sincerely,

Jess Johnson, Jr.

JJ:sc

cc: Senator Robert C. Byrd
Senator Mack Mattingly
Senator Strom Thurmond
Senator John W. Warner

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

May 2, 1983

TO : Honorable Mark O. Hatfield
Attn: Jeff Arnold

FROM : American Law Division

SUBJECT : Constitutionality of Financing Mechanisms in S. 865, 98th Congress Port Operations, Maintenance, and Development Legislation

This memorandum responds to your request for an analysis of whether the financing mechanisms found in S. 865, 98th Cong., 1st Sess., are consistent with various taxing clauses of the United States Constitution. The bill would provide for regular sources of user-generated funding for portions of port operations, maintenance, and improvements. The constitutional question has arisen with regard to Art. I, §9, cl. 5, providing that no tax or duty shall be placed on exports from any state, and Art. I, §10, cl. 2 and 3, prohibiting states from imposing import or export duties and tonnage duties, respectively, without congressional consent.

Summary of Bill

Under S. 865, a trust fund would be established in the United States Treasury to administer accounts for port operations and maintenance, navigation improvement projects, and local-share credits. §201(a). The fund's Operations and Maintenance Account would consist of enumerated federal use taxes imposed under the bill, vessel taxes imposed by the states, and amounts remitted to the Treasury during the preceding month by the Saint Lawrence Seaway Development Corporation pursuant to section §13(b) of the Act of May 13, 1954, as amended by the instant legislation, as well as any other amounts that Congress may appropriate. §201(b)(1), (2). The bill authorizes the yearly appropriation of funds from the account needed to pay for (1) 100 percent of eligible operations and maintenance of the Saint Lawrence Seaway and (2) 40 percent (except, 20 percent for FY 1984 and 30 percent for FY 1985) of the eligible operation and maintenance costs of all eligible deep-draft commercial channels and harbors within the United States and all Great Lakes navigation improvements operated or maintained by the United States. §201(b)(4).

A Navigation Improvement Account would consist of certain unexpended operations and maintenance funds held in a Special Credit Account as well as an amount equal to 85 percent of the sums collected under the new use tax provisions and amended Saint Lawrence Seaway legislation (that is, 85 percent of the total amount transferred to the Operations and Maintenance Account under §201(b)(2) of the bill). §201(c)(1),(2). These funds would be transferred from general revenues collected under the Tariff Schedules of the United States. §201(c)(2). The bill authorizes a yearly appropriation of sums from the account necessary to pay the federal share of any eligible deep-draft navigation improvement projects. §201(c)(3).

The bill would also establish a Special Credit Account consisting of certain unexpended balances that would be credited to subaccounts maintained with the Special Credit Account for the benefit of qualified port authorities. §201(d).

To finance the trust fund, S. 865 would create three types of taxes to be imposed on deep-draft vessels using United States commercial channels, harbors, and navigational waterways:

> (1) a tax on the use of any deep-draft commercial channel or harbor within the United States by a deep-draft commercial vessel, equal to the product of the uniform national vessel charge for the fiscal year, multiplied by the value of any qualified commercial cargo unloaded from such vessels at ports within the United States ports;
>
> (2) a tax on the use of any Great Lakes navigation improvement operated or maintained by the United States by a deep-draft commercial vessel, equal to the product of the uniform national vessel charge for the fiscal year, multiplied by the value of all qualified commercial cargo contained in the vessel at the time of such use; and
>
> (3) a tax on the use of any deep-draft commercial channel or harbor within the United States for purposes other than loading or unloading cargo, including, but not limited to, convenience, bunkering, refitting, or repair, determined according to a schedule of uniform national vessel charges established by the Secretary of the Treasury for this purpose. §301(a).

The "uniform national vessel charge" would be equal to a percentage fixed by the legislation. §301(a). "Qualified commercial cargo" would be defined as any item or unit of cargo which has not previously been taken into account in determining the amount of tax imposed on vessels using the Great Lakes or undertaking activities other than loading or unloading, or any qualified state vessel tax with respect to such vessel. The term would not include exports. Id. "Value" is deemed to be the declared value of any commercial cargo as evidenced by any bill of lading, cargo manifest, contract for carriage, or other documentary evidence of value, or if the cargo does not have a declared value, the fair market value of the cargo as determined by the Secretary of the Treasury. Id.

In addition to national charges, the legislation would authorize state vessel taxes to pay for port operations and maintenance by granting congressional consent under Art. I §10, cl. 2 and 3, of the United States

Constitution for this purposes. §302(a). The tax would be imposed on the use by any deep-draft commercial vessel of any deep-draft channel or harbor located at or adjacent to ports over which the state has jurisdiction, in an amount and under conditions determined by Congress. §302(b). The tax, which would be equal to the product of the uniform national vessel charge multiplied by the value of foreign-bound commercial cargo loaded onto the vessel at the port, would be collected by the United States Customs Service (or, under certain conditions, by the state) and paid into the general fund of the United States Treasury for the use and benefit of the Operations and Maintenance Account described above. §302(c).

The legislation would also provide for the establishment of federal/local partnerships for deep-draft navigation improvement projects under memoranda of agreement setting forth the responsibilities of each party with regard to project construction and operation. §401(a). The bill provides a required formula for allocating costs between the United States and the sponsoring port authority or authorities based on the nominal depth of the project. §401(b)(1). Congressional consent would be granted to the states to levy duties or taxes on any vessels engaged in foreign commerce to recover the local share of improvement projects, with the revenues to be paid into the United States Treasury and credited against the outstanding balance of the local share of project costs. §401(c)(1). Congressional consent would not preclude a state from financing its share from any other source of revenue not otherwise prohibited by law or the United States Constitution. §401(c)(3).

Briefly, S. 865 would authorize federal and state taxes on deep-draft commercial port and channel use (and a federal tax on Great Lake navigation improvement use) by deep-draft commercial vessels. The federal tax would be determined by the value of a vessel's import cargo multiplied by a uniform percentage. These funds would enter both Operations and Maintenance and Navigation Imporvement Accounts in a trust fund held in the United States Treasury. State vessel taxes would be determined by the value of a vessel's import or export cargo multiplied by the uniform percentage used for the federal tax. This revenue would be directed only to the trust fund's Operations and Maintenance Account. States are also authorized to levy taxes or duties on any vessel engaged in foreign commerce in order to pay the state's local share of any deepdraft navigational improvement project entered into in partnership with the federal government.

USER CHARGES: TAXES OR FEES?

Article I, §9, cl. 5 of the United States Constitution, prohibiting federal taxes on exports, and Art. I, §10, cl. 2 and 3, prohibiting respectively, state duties on exports and imports and state tonnage duties without congressional consent, pose limitations on the taxing authority of various levels of government. As the impositions contemplated by these clauses are all forms of taxation,[1] non-tax impositions would seem to be exempt from the constitutional requirements. In the case of S. 865, it would appear that federal and state charges for port operations and maintenance, as well as federal charges to be used for future port development, should not be viewed as taxes in the constitutional sense. At the same time, state fees imposed for port improvements projects might be considered taxes (or tonnage duties) and would thus require the consent of Congress before they could be exacted.

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[1] E.g., Pacific Insurance Co. v. Soule, 74 U.S. 433, 445-46 (1868).

The Supreme Court has rendered several decisions in which it made a distinction between a tax and a fee. In Packet Company v. Keokuk,[2] the city of Keokuk charged ships for the use of its wharves, the charge based on vessel tonnage. Some shipowners contended that the charge was a tax, impost, or excise on the use of interstate waterways violating the Constitution's commerce clause and limitation on state tonnage duties. The Supreme Court rejected this argument. It noted that the charges would be unconstitutional if they were taxes, imposts, or excises, but held that in reality they were fees. The Court stated:

> [a] charge for services rendered, or for conveniences provided, is in no sense a tax or duty. It is not a hindrance or impediment to free navigation.... It is a tax or duty that is prohibited: something imposed by virtue of sovereignty, not claimed in right of proprietorship. Wharfage is of the latter character. 3/

Later, in Huse v. Glover,[4] the Supreme Court once more refused to designate disputed charges as taxes or duties. The state of Illinois had charged tolls for passage through state-constructed locks on the Illinois River. Ship owners argued that the tolls violated both the Constitution's prohibition on state tonnage duties and the Federal Ordinance of 1787, which provided that the river would be a free waterway, "without any tax, impost, or duty." Citing Keokuk, the Court held that the toll was not a tonnage duty within the meaning of the Constitution. In addition, because the

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2/ 95 U.S. 80 (1877).

3/ Id. 84-85.

4/ 119 U.S. 543 (1886).

toll compensated the State for the use of its improvements, neither did it act as a "tax, impost, or duty," which the Court deemed to be "a charge for the use of the government."[5/]

More recently, the Supreme Court discussed the difference between taxes and fees in National Cable Television Association v. United States, (NCTA),[6/] a case involving a 30 cent fee that the Federal Communications Commission had imposed on Community Antenna Television (CATV) systems for each subscriber to the system. Petitioner had argued that the fee was improperly imposed under the Independent Offices Appropriation Act of 1952, 31 U.S.C. §483a, contending, *inter alia*, that the charge was a tax, which can be levied only by Congress. The Act authorized the imposition of fees, but required that they be "fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts...." The Court held that the charge was a fee, but declared that it had been improperly set and remanded. In reaching its conclusion, the Court said that use of the standard "public policy or interest served, and other pertinent facts" placed the assessment in the realm of taxation (solely a Congressional function) and found that the true measure of the authorized fee was the phrase "value to the recipient".[7/] The Court distinguished fees from taxes as follows:

[5/] Id. 548-49.

[6/] 415 U.S. 337 (1974).

[7/] *Id*. 341, 343.

> Taxation is a legislative function and Congress, which is the sole organ for levying taxes, may act arbitrarily and disregard benefits bestowed by the Government on a taxpayer and go solely on ability to pay, based on property or income. A fee, however, is incident to a voluntary act, e.g., a request that a public agency permit an applicant to practice law or medicine or construct a house or run a broadcast station. The public agency performing those services normally may exact a fee for a grant which, presumably, bestows a benefit on the applicant, not shared by other members of society. It would be a sharp break with our traditions to conclude that Congress had bestowed on a federal agency the taxing power that we read 31 U.S.C. §438a narrowly as authorizing not a "tax" but a "fee." A "fee" connotes a "benefit" and the Act by its use of the standard "value to the recipient" carries that connotation. ... The phrase "value to the recipient" is, we believe, the measure of the authorized fee. [8/]

In Federal Power Commission v. New England Power Co.,[9/] the Supreme Court struck down a charge assessed under the Independent Offices Appropriation Act of 1952, 31 U.S.C. §438a (the same statute at issue in NCTA). The fee was an annual assessment imposed against all jurisdictional electric utilities in proportion to their wholesale sales and interchange of electricity, and against all natural gas companies with operating revenues of $1 million or more in proportion to their deliveries in interstate commerce. The Court construed the Act as authorizing a reasonable charge to "each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit," and as precluding a charge for services rendered "when the identification of the ultimate beneficiary is obscure and the services can be primarily considered as benefitting broadly the general public."[10/] The Court found

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8/ Id.

9/ 415 U.S. 345 (1974).

10/ Id. 349-51; Id. 356-57 (Marshall, J., concurring).

this to be a narrow construction of the Act, but one that "keeps it within the boundaries of the 'fee' system and away from the domain of 'taxes' ...."[11] The Court thus refused to sustain a fee imposed against entire industries, insisting that a "fee" could be properly imposed only against identifiable recipients for quantifiable services from which the recipient receives a special benefit.

The Supreme Court and lower courts have also taken similar considerations into account in those cases involving the imposition of state tonnage duties. In addition to Keokuk, discussed above, a number of courts have examined Art. I, §10, cl. 2, providing that a state may not without the consent of Congress, impose a "duty of tonnage" upon ships entering its ports. The Supreme Court defined the scope of this provision in holding that it "embraces all taxes and duties regardless of their name or form, and even though not measured by the tonnage of the vessel, which operate to impose a charge for the privilege of entering, trading in, or lying in a port."[12] The clause does not prohibit "charges made by state authority, even though graduated according to tonnage, for services rendered to and enjoyed by the vessel, such as pilotage, ... charges for the use of locks on a navigable river, ... or fees for medical inspection."[13]

In Clyde Mallory Lines v. Alabama ex rel. State Docks Commission, the Court upheld a $7.50 fee imposed by the Commission upon vessels weighing 500 tons or more. The funds so generated were to be used for harbor policing under Ssate-adopted rules to insure vessel safety and facilitate harbor use. The rules regulated the disposition of sailing ship rigging, vessel speed and mooring, the selection and change of vessel anchorage, vessel loading and unloading, and the use of lighters, barges, and rafts. The Court rejected appellant shipping company's argument that it had neither asked for nor received any of the police service for which the charge was made, holding that the policing was a permissible use of the fee even though the appellant was not given any special assistance. The Court distinguished harbor policing from wharfage and other services that benefit only the particular vessels using them, stating that "[t]he benefits which flow from the enforcement of regulations, such as the present, to protect and facilitate traffic in a busy harbor inure to all who enter it."[14/] In dicta, the Court observed that port fees imposed for dredging and other forms of harbor improvement may involve considerations different from those at issue in the instant case.[15/] There has apparently been no reported decision specifically discussing these considerations.

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[11] Id. 351.

[12] 296 U.S. 261, 265-66 (1935).

[13] Id. 266 (citations omitted).

The Supreme Court also upheld state tonnage-based fees where they were used to compensate a local government for wharf improvements. In Packet Co. v. St. Louis,[16/] the Court upheld a municipal corporation's imposition of a fee on parties using its wharves. The fee was used to pay for projects undertaken by the harbor master, whose duties included providing numerous services in aid of commerce and navigation. In addition, the Court noted

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[14/] Id.

[15/] Id. 267.

[16/] 100 U.S. 423 (1879).

that the municipal corporation acquired and owned property along the west bank of the Mississippi River, "and the purposes of a wharf has improved, paved, and maintains in repair, at its own cost, one and a half miles of the same at enormous expense."[17] The Court characterized the principal question before it as

> whether a municipal corporation, owning improved wharves and other artificial means which it has provided and maintains, at its own cost, for the benefit of those engaged in commerce upon the public navigable waters of the United States, is prohibited by the national Constitution from charging and collecting from those using its wharves and facilities, such reasonable fees as will fairly remunerate it for use of its property. [18]

The Court found the fee to be a proper wharfage charge, noting that the amount charged was not out of proportion to the advantages and benefits that the vessels received in using the improved wharf.[19] It also dismissed the argument that the wharfage fees were exacted for the purpose of increasing the city's general revenue beyond what it needed "to meet its outlay, from time to time, in maintaining its wharves in such condition as the immense business and trade of that locality required," finding nothing in the record to support this contention.[20]

St. Louis relied in part on an earlier case, Keokuk, discussed above.[21] In that case, the Supreme Court sustained a muncipal wharfage fee imposed on steamboats that had been challenged as a prohibited tonnage duty.

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[17] Id. 427.

[18] Id.

[19] Id. 429.

[20] Id.

[21] 95 U.S. 80 (1877). See text at supra notes 3-4.

Holding that mere reference to tonnage did not render a fee a tonnage duty, the Court stated that the Constitution's drafters did not have in mind "charges for services rendered or for conveniences furnished to vessels in ports, which are facilities to commerce rather than hindrances to its freedom."[22]

The state tonnage duty and local and agency fee cases appear to resolve their particular legal issues in a similar fashion. Thus the Supreme Court has found that tonnage-based fees that pay for harbor maintenance and improvements are not prohibited by the constitutional limitation on state tonnage duties, distinguishing such services from the mere privilege of entering, trading in, or lying in a port. At the same time, courts have expressed some uncertainty about the financing of indirect and future services through such fees. Further, the Supreme Court has generally deemed a charge to be a fee (rather than a tax) where there is an identifiable recipient, special services rendered, and a reasonable relationship of the charge to cost. The general principles used by the Court to distinguish a fee from a tax seem to imply, as may the tonnage duty cases, that in some instances a user charge used to finance port improvement projects might be considered a tax and thus find itself subject to constitutional taxing requirements.

Neither the Supreme Court nor, it appears, any lower federal court has directly ruled on the question of taxes or fees imposed for future port projects, such as dredging or other major capital improvements. The one reported state case on the issue holds that local imposition of "wharfage" in advance of wharf construction or acquisition does constitute an

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22/ 95 U.S. 87-88.

attempt to lay a prohibited duty of tonnage.[23] Still, it is unclear whether the standards used in NCTA and New England Power to characterize a fee would be applicable to a congressionally-prescribed scheme to maintain and develop the nation's ports funded through the imposition of fees on the users of those facilities. The distinction made between "tax" and "fee" in both of these cases responded to assertions that the charge was improperly assessed by a federal agency. Thus, in NCTA, where it was argued that the agency could not impose a certain charge under the Independent Offices Appropriation Act because the imposition constituted the exercise of an impermissible delegation of Congress' taxing authority, the Court held that the charge was in fact a fee but that it was improperly set because of a statutory defect. It is possible that the Court might analyze a charge differently where it is prescribed by Congress itself.

In Massachusetts v. United States,[24] the Court upheld a federal tax used in part to provide for airport development, or, in other words, for future services. The case involved a Federal tax imposed on state aircraft under the federal Airport and Airway Revenue Act of 1970, Pub. L. No. 91-258, Title II, 84 Stat. 236. This statute, along with the Airport and Airway Development Act of 1970, Pub. L. No. 91-258, Title I, 84 Stat. 219, set up a comprehensive federal program to maintain the nation's airports and to construct new facilities. Funding would be provided through a series of excise taxes. Among these was an annual "flat fee" registration tax on civil aircraft (including that owned by state and federal governments) that fly in navigable United States airspace. Under protest, the State of Massachusetts paid the registration tax applied to a helicopter it used exclusively for police functions, arguing that tax was prohibited under the doctrine of implied constitutional immunity of state governments from federal taxation.

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[23] People v. Pacific Rolling Mills Co., 60 Cal. 323 (1882) (concurring opinion; citing Cannon v. City of New Orleans, 20 Wall. (87 U.S.) 577 (1874); Packet Co. v. Keokuk, 95 U.S. 80 (1877)).

[24] 435 U.S. 444 (1978).

The Court upheld the tax as applied to the State, finding that the constitutional immunity doctrine is inapplicable to a "nondiscriminatory taxing measure that operates to defray the cost of a federal program by recovering a fair approximation of each beneficiary's share of the cost."[25/] Placing the measure in the category of "taxes that operate as user fees,"[26/] the Court then responded to the State's argument that the imposition should not be treated as a user fee because its nature as a flat fee prevented the amount charged from being directly related to the degree of use of the airways and that the use of such a rough approximation of cost conflicted with the values protected by the state tax immunity doctrine.[27/] The State urged the Court to define user fees as a charge for measureable amounts of government facilities for purposes of the state tax immunity doctrine.[28/] The Court found that it was doubtful that the federal government could recover its costs from direct beneficiaries without using at least some flat annual fees and that even if it could recover all costs through charges for measureable amounts of service use, the State's definition would not as a matter of course appreciably advance

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[25/] *Id*. 460.

[26/] *Id*. 463.

[27/] *Id*. 464-65.

[28/] *Id*. 465.

the policies inherent in the immunity doctrine.[29] Finding that more precise calibrations might place undesirable administrative burdens on the federal government, the Court held that "so long as the charges do not discriminate against state functions, are based on a fair approximation of use of the system, and are structured to produce revenues that will not exceed the total cost to the Federal Government of the benefits to be supplied, there can be no substantial basis for a claim that the National Government will be using its taxing power to control, unduly interfere with, or destroy a State's ability to perform essential services".[30] The Court then found that the tax was consistent with the standards set forth above.[31]

Of particular interest here is the fact that, even though there might have been a probable deficiency in the total taxing formula arising because not all aircraft would make use of either the federal navigational facilities or the airports planned or constructed with federal assistance, the Court found that the taxing scheme at issue was still a fair approximation of the cost of the benefits each aircraft received.[32] Because the services were directed at the whole of navigable United States airspace and inured to the benefit of all users, the Court distinguished its decision in Cannon v. New Orleans,[33] where it held that a local tax on the use of wharves of riverbanks indiscriminately, rather than only the use of wharves built by the city, could not be justified as compensation for the use of municipal facilities.[34] Instead, it likened the instant situation to that presented in Mallory Lines,[35] where the Court held that a vessel that has not been the recipient of any harbor police services could be required to pay a charge designed to defray their costs since the services ultimately benefitted all vessels in the port.[36]

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[29] Id.

[30] Id. 466-67.

[31] Id. 467-70.

[32] Id. 468.

[33] 20 Wall. (87 U.S.) 577 (1874).

The Massachusetts case appears to provide support for the contention that, provided there is some fair approximation of cost of benefits that a user receives, a federal tax that operates as a user fee does not lose its character as the latter because the amassed revenue is used to finance future facility development. The Court held that such a scheme was inoffensive to the constitutional doctrine of implied state immunity from federal taxation. One may argue that a court might analogously find that a "tax that operates as a user fee" is free from the restraints posed by the express constitutional taxing requirements so long as it passes the three-pronged test: (1) it is nondiscriminatory, (2) it is based upon some fair approximation of use, and, (3) it is not excessive in relation to the cost to the government of the benefits conferred.[37] The case appears to give the taxing authority a considerable amount of discretion in the manner it measures the fee so long as the "fair approximation of use" standard is met. The fact that a charge is measured in part by cargo value does not necessarily seem to cause it to conflict with this standard, although the issue has not apparently been ruled upon by any court. The tax on the use of deep-draft commercial channels or harbors for purposes other than loading or unloading commercial cargo may, however, be subject to different standards. The bill provides no indication of how the charge is to be set except that it is to be determined by a uniform national schedule of vessel charges established by the Secretary of the Treasury for this purpose. In light of NCTA's requirements for agency fee-setting, it may be advisable to place some specific standards in the legislation to guide the Secretary's actions.[38/]

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[34] Id. 468-49, n. 23.

[35] 296 U.S. 261 (1935); see text of supra notes 12-15.

[36] 435 U.S. 468-69, n. 23.

[37] In Massachusetts, the Court applied this test as earlier employed in Evansville-Vanderburgh Airport Authority v. Delta Airlines, Inc., 404 U.S. 707 (1972), where it sustained a $1 head tax on commercial airline passengers against attacks based on the commerce clause and the right to travel. In the former decision, it substituted in the first element the term "state function" for "interstate commerce." 435 U.S. 466. Thus, were the federal taxes established in S. 865 measured by the value of export as well as import cargo, a court could well deal with a challenge based on the constitutional prohibition against federal export taxes by using the same (continued)

The question still appears to remain, however, whether a tax that operates as a user fee is to be judged by standards other than those delineated in the *Massachusetts* case when the charge is imposed by a state. It is unclear from the decision whether the charge should be deemed a user fee or a tax for purposes of the constitutional export/import tax and

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continued: test and substituting the term "exports from any state" for "interstate commerce" or "state function." One might argue that the taxes would not violate the constitutional prohibition (so long as the other two requirements were met) because there does not appear to be an intent on the part of Congress to discriminate against a particular state's exports. See, e.g., 2 Story, *Commentaries on the Constitution of the United States* 469-71 (Da Capo 1970).

38/ See, e.g., American Law Division, Congressional Research Service, "Application of Constitutional Delegation Standards Based Upon the 'Fee' or 'Tax' Dichotomy" (1982) (enclosed).

tonnage duty classes, i.e., Art. I, §10, cl. 2 and 3, respectively. Because congressional consent is required for such exactions, a court ruling on such a charge in absence of consent, might use an analytical framework similar to that applied in *NCTA* and *New England Power* to distinguish a tax from a fee. In such a case, a more stringent standard might be used to link the service provided with the paying recipient than that employed in *Massachusetts*, a relevant factor here considering the fact that state charges will in some instances be used to pay for future navigational improvements. As noted above, exactions (both federal and state) imposed for operations and maintenance would appear to be true user charges free from constitutional taxing and tonnage duty restraints. However, to close off a potential avenue of litigation involving state charges imposed to pay the local share of port improvement projects, it may be advisable to provide the states with congressional consent under Art. I, §10, cl. 3 for these impositions, as S. 865 does. With regard to Art. I, §10, cl. 2, which prohibits states from imposing import and export duties without the consent of Congress, it would appear that to the extent that the bill constitutes such consent, there would not be any constitutional difficulties regarding export taxes with any resulting state-imposed fees.

We hope that this memorandum is helpful to you and that you will call on us if you have any additional questions.

Jeanne Jagelski

Jeanne Jagelski
Legislative Attorney

Senate Environment And Public
Works Committee
Subcommittee on Water Resources
June 21, 1983

Hearing on Port User Fees

Statement of Hon. Robert T. Matsui
Member of Congress from the State
of California

Mr. Chairman,I would like to thank you and the Members of this Committee for holding these hearings and for your evident commitment to move forward on this issue of port user fees. I very much appreciate the opportunity to testify.

It sometimes seems that I've spent an entire career in Congress working on this one issue. I know that the Chairman is as familiar as I am with the frustration of the stand-off we achieved in the last Congress over the positions that separated the larger (high value cargo, low cost) ports and the smaller (low value export cargo, high cost) ports.

We are clearly in a crisis for authorizing and funding navigation improvement projects, and we cannot leisurely be about enacting a solution. We also face a crisis for funding the maintenance of existing channels and harbors which is not so apparent, but which is more critical because it affects all of our ports. As the deficit grows, so will the likelihood that operation and maintenance funds will be washed out in a riptide, so an alternative funding source is necessary for both new construction and operation and maintenance.

In December we began working on a bill to satisfy all interests or at least one everyone could live with. The broad motivation is that everyone needs something that either isn't now being done, like new construction, or is in serious jeopardy of not being done, like maintenance dredging. The bill we arrived at, S.865 and H.R. 2406, is not really a compromise because we did not start from two or more positions and try to move toward a center. Instead, we threw out what we had before, or at least those parts which were controversial, tried to educate ourselves to the broad spectrum of needs and problems and began drafting a new bill by starting at the center. As each element was worked on, we tried to examine every facet from every perpective. It is a process which still continues, with honing, clipping and polishing as we receive more and more input from hundreds of individuals in a very complex industry.

By the time our bills were introduced, however, we had achieved the basic balance which we strove for. The legislation would impose a new tax at a level which could easily be supported by every type of commodity. It would not result in diversions of cargoes between ports. It would ensure the future of all of our ports and provide a joint federal-local mechanism for improvements in those ports which need them. It provides a new source of revenue to replace money currently spent by the federal government and establishes a fair market place test for improvements. In a manner very protective of the environment, it condenses some of the protracted federal study, authorization, and permit procedures. It will help the ports; it will help the federal deficits; it will help our economy. (Attached is a section-by-section analysis of the legislation. Note that modifications have been accepted, some of which appear in the Star Print of the Senate bill. Of special interest may be the simplification of the uniform user fee mechanism, eliminating the administrative separation of the export fee from the import and domestic fee).

While there seems so far to be no end to the tinkering we can and must do to our bills, none of the basic elements seem capable of tolerating much adjustment without destroying the rather fragile balance. Proud as we may be of our efforts on S. 865 and H.R. 2406, if there is one central fact which we have learned over the last eight months, it is that, even if the solution we uncovered turn out not to be the approach that is finally adopted, whatever alternative emerges would have to encompass that same kind of balance. Frankly, I have yet to see another vehicle which comes close to meeting that test.

Because this testimony is being presented with the five Senate authors of the bill, we have split up particular parts of the bill for focus of each witness. So there are two aspects of the bill I would like to give extra attention to: the use of customs revenues because I serve on the Ways and Means Committee and the fast tracking because that language has special roots in the House.

One part of our proposal which has received considerable attention is the dedication of customs revenues to provide the federal match for new construction. In fact the reference to customs is principally symbolic because no shipping agent ever makes a check out to the Customs Service or to anyone except the General Fund of the U.S. Treasury. But the symbolism is very appropriate because most of customs revenues are generated through our water ports, and historically the ports themselves collected the customs. The function served by the reference to customs in our bill is to provide a secure source of funds for new construction. We are all familiar with the logjam on authorization and funding of new projects. The competition over who should be first has evolved to settle for less than first just as long as the line is moving and there is some certainty that the line will continue to move. The dedication of customs will provide that certainty. I must add that this dedication of customs is not defensible or politically viable unless it is accompanied by a source of funds new to the federal government. That new source of funds is the uniform user fee.

The last title of our bills deals with fast tracking the three stages of government action: pre-authorization, authorization and post-authorization.

The pre-authorization section was intended to deal with the Corps of Engineers procedures prior to submission of a project to Congress, particularly the design, and environmental impact and economic studies. In fact, this language may be a little stronger than we intended, especially as it includes agencies other than the Corps. In the Senate, changing that language is appropriately the responsiblity of this committee. When we approach mark-up in one of the house committees, we may be suggesting modifications of this section.

The authorization section in S. 865 is intended to provide some certainty and timeliness to congressional action on projects. The language is inextricably tied to the Rules of the Senate. A similar section was not included in the House bill, because, among other things, it would have resulted in referral of the bill to the House Rules Committee which we preferred to avoid because it was headed for three committees already.

The remainder of Title Five of our bills is intended to limit the amount of time for bureaucratic steps after Congress has decided a project should be built. While the language differs somewhat between the House and Senate versions, the procedures are virtually the same. The language in the House bill is an adaptation of language passed by the House several years ago on the Energy Mobilization Board. It was contained in the "Udall-Wirth" substitute and was supported by the environmental groups. The Senate language is a distillation of the House language. The concern addressed by these sections of the bill is the delays in issuing permits. All of the necessary studies and conditions should have been completed and settled prior to submission of a project proposal to Congress for authorization. The provisions of the bill would require that permits be issued within one year after authorization, would set the Corps of Engineers as the lead federal agency to establish a common schedule or permit actions and to promote common paperwork, and in the event another agency is missing its deadlines would require the Corps to "take over the file" and make the decisions for the other agency. The bill does not affect the substance of federal environmental laws, does not affect any state or local laws or agencies, and does not limit judicial review related to the substance of environmental laws at any level.

In working with the five Senators on these bills, we have found no significant points of disagreement. I am hopeful that before this Congress adjourns, we will find legislation passed by both Houses of Congress on which we can agree so thoroughly and which we can enact.

DEEP-DRAFT NAVIGATION ACT OF 1983
S. 865/H.R. 2406 SUMMARY AND
SECTION-BY-SECTION ANALYSIS
(DIFFERENCES BETWEEN THE BILLS UNDERLINED)

SUMMARY

1. Provides for 40% of deep-draft operations and maintenance costs through a nationally uniform vessel tax based on the value of cargo. The maximum tax allowed is 0.06% of value; but estimations are that the actual tax will be between 0.025% and 0.03%. Remaining 60% comes from Federal Treasury.

2. Sets aside a portion of customs revenues to be used as the federal share of deep-draft channel and harbor improvements.

3. Provides that a portion of the nationally uniform tax may be applied toward the local share of improvements in ports where the tax collected exceeds O&M benefits.

4. Establishes a trust fund with three accounts, one for each of the items listed above.

5. Sets a scale for the local and federal share of navigation improvements, with the local share increasing with the depth of the projects from 20% to 75% and provides long-term financing for the local share.

6. Provides expedited procedure for authorization (Senate bill only) and environmental permits.

IF YOU HAVE ANY QUESTIONS, CALL: (AREA 202)

Sen. Hatfield	Jeff Arnold	224-3753	Rep. Matsui	Mike Kirby	225-7163
Sen. Byrd	Randy Ihara	224-3232	Rep. Whitehurst	John Magill	225-4215
Sen. Warner	Susan Magill	224-2023	Rep. Bateman	John Rayfield	225-4261
	Roger Sindelar	224-5025	Rep. Boggs	Jan Schoonmaker	225-6636
Sen. Thurmond	Pete Kumala	224-7735	Rep. Jones	Ed Welch	225-4047
Sen. Mattingly	Cliff Humphrey	224-3643			

SECTION-BY-SECTION ANALYSIS

TITLE I. Sec. 101 - Fundings and Purposes
Sec. 102 - Definitions

TITLE II. Trust Fund. Sec. 201 - Establishes Trust Fund with three accounts: Operations and Maintenance, Navigation Improvements, and Special Credit.

After a three-year phase-in period, the O&M Account provides 40% of the O&M for channels and harbors, funded by the uniform tax from title III.

The Improvement Account provides the federal share of new construction as established in title IV and as funded by transfers from customs receipts. Senate bill: amount of federal construction money equals 95% of amount collected in national user tax for O&M, approximately $140-160 million after phase-in. House bill: amount of federal construction money equals 2.2% of previous year's customs receipts, approximately $220 million in first year.

The Special Credit Account provides a credit for those ports in which the amount collected by the vessel tax exceeds the cost of O&M on its channels and harbors. This fund may be applied against the local share of new construction only. The annual amount will equal about 10% of the amount raised by the tax for O&M.

TITLE III. National Vessel Tax. Sec. 301 & 302 - Establishes tax on vessels based on the value of import, export, coastwise and lakewise cargoes. The rate of the tax will be determined annually from the formula: total cost of all O&M x 44% ÷ value of all waterborne deep-draft cargo. Annual rate may not exceed 0.06% and will be collected only once on each cargo.

Sec. 303. Provides for waiver of collection of the U.S. portion of tolls on the Saint Lawrence Seaway for ships which pay the tax in Secs. 301-302.

Sec. 304. Requires the secretaries of State and Transportation to initiate discussions with the Government of Canada toward reducing or eliminating tolls on the Saint Lawrence Seaway.

TITLE IV. New Construction. Sec. 401 - Sets the local/federal match for new construction, with the local share increasing with the depth of the project: 35 feet or less = 20% local; 40' = 25%; 45' = 30%; 50' = 40%; 55' = 55%; 60' or deeper = 75% (with graduations between most of the depths cited). The total cost, federal plus local, by definition shall include the costs traditionally provided by the local authority. The local share may be financed up to 50 years. The local port is given authority to levy a port-specific user fee to repay its financial obligation or may use any other legal source of revenue.

Sec. 402 - Allows ports to proceed with any new construction projects they wish to locally finance 100%.

TITLE V. Expedited Procedures. Sec. 501 - Sets the pre-authorization procedures for the Corps of Engineers for new projects.

Sec. 502 - Sec. 502 (Senate bill only) - Sets procedure for Congressional authorization of new projects. (The House bill has no comparable section).

Sec. 502 - (Sec. 502-505 below refer only to the House bill and deal with the fast tracking of environmental permits. Sec. 503-505 of the Senate bill provide procedures equivalent to Sections 502-505 of the House bill).

Sec. 502 - The Corps of Engineers, in consultation with appropriate federal agencies, will publish a schedule for making of all decisions on permits, etc., for new navigation projects and construction of landside facilities related to those projects. The schedule will be published 75 days after Congressional authorization of the project. The schedule will provide that all decisions be completed within one year after publication. Federal agencies will consolidate their proceedings. The Corps of Engineers will monitor and be able to modify the schedule.

Sec. 503 - Provides consistency with obligations of other statutes.

Sec. 504 - Provides a procedure for the Corps of Engineers to investigate the reasons for other agencies' failure to meet the project schedule and empowers the Corps to take necessary steps to see that decisions are promptly made, including, upon completion of the investigation procedure, the power of the Corps to determine compliance with federal law in lieu of the defaulting agency. (No provision is made for diminished compliance with federal law, either statutes or regulations. No provision is made for override of state law.)

Sec. 505 - Establishes the time and place for seeking judicial review of actions under Sections 502-505.

Sec. 506 - Non-separability. If a court decides that any provision of the bill is invalid, the remainder of the provisions in the Act become invalid. (Senate bill will be modified to conform).

ATTACHMENTS TO SENATOR
PROXMIRE'S STATEMENT

ENCLOSURE NO. 1

O&M COST RECOVERY USER FEES UNDER PRESENT SYSTEM
COMPARED TO
USER FEES UNDER LEGISLATION PROPOSED IN THE 98TH CONGRESS
(PER NET TON)

PORT RANGE	PRESENT FEE	FEE W/S.865 (HATFIELD) OR H.R.2406 (MATSUI)	FEE W/ S.970 (MOYNIHAN)
GREAT LAKES/ST. LAWRENCE	U.S. & CANADIAN TOLLS	CANADIAN TOLLS + EST. $.00033 PER $1 VALUE	1/2 U.S. TOLLS + CANADIAN TOLLS + $.099/NT
GENERAL CARGO @ $500/NT	$2.52/NT	$2.125/NT	$2.339/NT
CORN GRAIN @ $110/NT	$ .91/NT	$.796/NT	$.934/NT
COAL @ $40/NT	$1.22/NT	$.99/NT	$1.195/NT
CONTAINERIZED CARGO @ $2375/NT	$1.54/NT	$2.062/NT	$1.51/NT
MISSISSIPPI RIVER SYSTEM	FUEL TAX	FUEL TAX	FUEL TAX
PER GAL. OF FUEL	$.08/GAL	$.08/GAL	$.08/GAL
PER TON OF CARGO DEPENDING ON MIDWEST ORIGIN	$.16-$.24/NT	$.16-$.24/NT	$.16-$.24/NT
OTHER USA	NONE	EST.$.00033 PER $1 VALUE	$0.99/NT
GENERAL CARGO @ $500/NT	$.0	$.165/NT	$.099/NT
CORN GRAIN @ $110/NT	$.0	$.036/NT	$.099/NT
COAL @ $40/NT	$.0	$.013/NT	$.099/NT
CONTAINERIZED CARGO @ $2375/NT	$.0	$.784/NT	$.099/NT

NOTE:
1. S.947 (ABDNOR) NO USER FEE SYSTEM DELINEATED IN THIS BILL.
2. H.R.1512 (BIAGGI) USER FEES TO BE DETERMINED BY SECRETARY OF THE ARMY ACTING THROUGH THE CORPS OF ENGINEERS ON CERTAIN NAVIGATION IMPROVEMENT PROJECTS AUTHORIZED AFTER ENACTMENT OF THIS ACT. BEFORE DEEP DRAFT USER CHARGES COULD BE APPLIED FOR ANY OTHER PURPOSE, THE BILL MANDATES A DEEP DRAFT USER CHARGE STUDY.
3. FOR UNIFORMITY FEES WERE CALCULATED ON BASIS OF OCTOBER 1, 1984 EFFECTIVE DATE.

DLR/per

ENCLOSURE NO. 2

ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION
ANNUAL TOLL REVENUES
1977 - 1982

YEAR	TOTAL REVENUES	TOTAL CARGO TONNAGE
1977	$8.6 MILLION	57.4 MILLION
1978	9.9 MILLION	56.9 MILLION
1979	11.0 MILLION	55.3 MILLION
1980	9.8 MILLION	49.5 MILLION
1981	10.5 MILLION	50.6 MILLION
1982	10.2 MILLION	42.8 MILLION

ENCLOSURE NO. 3

USER CHARGE OPTIONS

UNIFORM TONNAGE CHARGE

- 16¢ PER SHORT TON
- APPROXIMATELY $230 MILLION WILL BE COLLECTED NATIONWIDE
- APPROXIMATELY 65% OF O&M EXPENDITURES WILL BE RECOVERED
- 0% OF NEW CONSTRUCTION

AD VALOREM CHARGE

- TAX BASED ON THE VALUE OF THE COMMODITY
- $.0005 PER $1 VALUE OF THE COMMODITY

- IRON ORE	$48/TON	→	2.4¢ PER TON
- COAL	$42/TON	→	2.1¢ PER TON
- LIMESTONE	$3/TON	→	.2¢ PER TON
- CEMENT	$60/TON	→	.8¢ PER TON
- GRAIN	$112/TON	→	5.6¢ PER TON
- PETROLEUM PRODUCTS	$224/TON	→	11.2¢ PER TON

- 0% OF NEW CONSTRUCTION

ENCLOSURE NO. 4

USER CHARGE

STUDY ASSUMPTIONS

- COMMODITY SELECTION
    - OVER 200 COMMODITIES MOVE ON THE GREAT LAKES

	% OF TONNAGE	
IRON ORE	42.4%	77%
COAL	22.0%	
LIMESTONE	12.6%	
GRAIN	9.3%	
PETROLEUM PRODUCTS	3.0%	
BUILDING CEMENT	2.0%	
NONMETALLIC MINERALS	1.0%	
TOTAL	92.3%	

ENCLOSURE NO. 5

THE EFFECT OF USER CHARGES ON TRANSPORTATION COSTS
(16¢/TON) UNIFORM TONNAGE CHARGE

	TOTAL TRANSPORTATION COSTS (MILLION)	TOTAL USER CHARGE PAYMENTS (MILLION)	USER CHARGE AS A PERCENT OF TRANSPORTATION COSTS
IRON ORE	$314.2	$12.1	3.9%
COAL	$95.9	$6.2	6.5%
LIMESTONE	$57.4	$3.5	6.2%
CEMENT	$11.0	$.6	5.3%
GRAIN	$42.0	$1.7	4.0%
PETROLEUM PRODUCTS	$19.3	$1.1	5.9%
NONMETALLIC MINERALS	$15.6	$1.0	6.3%
TOTAL (92% OF TONNAGE)	$555.4	$26.4	4.7%

ENCLOSURE NO. 6

THE EFFECT OF USER CHARGES ON TRANSPORTATION COSTS
($.0005/$1 VALUE) UNIFORM AD VALORM CHARGE

	TOTAL TRANSPORTATION COSTS (MILLION)	TOTAL USER CHARGE PAYMENTS (MILLION)	USER CHARGE AS A PERCENT OF TRANSPORTATION COSTS
IRON ORE	$314.2	1.8	.6%
COAL	$95.9	.8	.8%
LIMESTONE	$57.4	.03	.1%
CEMENT	$11.0	.03	.2%
GRAIN	$42.0	.6	1.4%
PETROLEUM PRODUCTS	$19.3	.8	4.1%
NONMETALLIC MINERALS	$15.6	.2	1.0%
TOTAL (92% OF TONNAGE)	$555.4	4.2	.8%

3/17/83
DRAFT

ENCLOSURE NO. 7

POLICY POSITION
OF THE GREAT LAKES GOVERNORS
ON DEEP-DRAFT NAVIGATION USER CHARGES

The Administration has embarked on an economic recovery program which includes the concept of user charges to recover federal expenditures for the operation and maintenance of and improvements to the nation's deep-draft navigation system. This is an approach which is supported in principle by the Great Lakes Governors. This approach could result in a fundamental shift in the nation's historic approach to federal involvement in water transportation.

Throughout the 200-year development period of the water transportation system, which now comprises 189 deep-draft ports and 25,000 miles of navigable inland and intracoastal waterways, the federal government has been responsible for construction, maintenance and operation of the navigation channels and harbors. The St. Lawrence Seaway is the only deep-draft waterway which has been non-federally supported, as tolls have been imposed since 1959 to cover the costs of the Seaway.

The imposition of deep-draft navigation user charges could have serious disruptive impacts on the Great Lakes/Seaway system. The system is unique in that it handles substantial domestic shipments between U.S. Great Lakes ports. Next in importance are the waterborne cargoes between the U.S. and Canada and the international cargoes shipped overseas. Because of the unique nature of the Great Lakes/Seaway System, a study should be performed of the economic impacts of any user charge proposal before implementation.

It is the joint view of the undersigned Great Lakes governors that if legislation for deep-draft navigation user charges is considered by Congress, without the benefit of an economic impact study, the legislation should include the following provisions to provide for the special concerns and problems of the Great Lakes/Seaway system.

- A national uniform fee for deep-draft commercial navigation.
- The fee would be collected directly from the users and administered by a federal agency.
- Congress should establish the specific fee.
- A maximum of 25% cost recovery for the operation and maintenance of the deep-draft commercial navigation system, phased in over a 5-year period in increments of 5%.
- The revenues should be kept in a distirct trust fund exclusively for the operation and maintenance of the deep-draft commercial navigation system, separate from the trust fund for the inland waterways or other systems.

- Maintenance should be defined as only activities necessary to maintain channels and harbors to the authorized depth, including construction of confined disposal facilities and rehabilitation of breakwaters, locks and other controlling works and structures that are necessary to maintain the existing capacity of the system.

- The U.S. portion of the St. Lawrence Seaway is a part of the national deep-draft commercial navigation system. Tolls should no longer be collected for operation and maintenance costs.

- The connecting channels of the Great Lakes including those presently under the Administration of the St. Lawrence Seaway Development Corporation are a part of the national deep-draft commercial navigation system. User fees should not be collected separately from vessels using the connecting channels.

- Construction costs for increased capacity of the connecting channels of the Great Lakes should continue to be 100 percent federally funded.

- Development of fast tracking procedures including appropriate economic and environmental analyses to shorten the approval and implementation process for navigation projects.

James R. Thompson Governor, State of Illinois	Governor, State of Minnesota
Date	Date
Governor, State of Indiana	Governor, State of Ohio *
Date	Date
Governor, State of Michigan *	Governor, State of Wisconsin
Date	Date

ENCLOSURE NO. 8

RECOMMENDED CHANGES TO *STAR PRINT* 18 APRIL 1983
OF S.865
"THE DEEP-DRAFT NAVIGATION ACT OF 1983"

TITLE I.

Sec. 101(b)(4), Pg. 3, Line 15 - Delete the words "and Great Lakes ports" and insert the words "United States section of the" before "Saint Lawrence Seaway."

Comment: Technical correction. Great Lakes ports are already operated, maintained and improved under the same system as ports on the other three coasts.

Sec. 102(a)(1), Pg. 3, Lines 21 and 22 - Either insert the word "Eligible" at beginning of Lines 21 and 22 or insert a separate definition of "eligible deep-draft commercial channel or harbor".

Comment: Although this term is used repeatedly throughout the bill, it is never defined.

Sec. 102(a)(1), Pg. 3, Lines 22-27 - At end of Line 22, delete the word "or" and insert a comma. On Lines 23 and 24, insert ", lock" after the word "harbor".

Comment: This broadens the definition to include locks such as those found on the St. Lawrence Seaway System.

Sec. 102(a)(5), Pg. 4, Lines 9-11 - Delete the clause ", including any eligible deep-draft commercial channels or harbors located within the Great Lakes,".

Comment: Unnecessary referral to the Great Lakes ports which are adequately included by the definition of "deep-draft commercial channel or harbor." See Sec. 102(a)(19) Pg. 5. Repetitious referral to the Fourth Seacoast unduly focuses attention to the unique organization and management problems of the St. Lawrence and perpetuates the Seaway's historical "poor cousin" status.

Sec. 102(a)(5)(B), Pg. 4, Lines 21-28 - Replace Lines 21-28 with the following:

> "(B) As applied to any eligible navigation facilities operated or maintained by the United States government or agency thereof, including any public or quasi-public corporation operating under a charter from the United States, the term "eligible operations and maintenance" shall include all operations, maintenance, repair and rehabilitation, including maintenance dredging, reasonably necessary to keep such eligible navigation facilities in operation and reasonable state of repair."

Comment: Again, it is not necessary to continually refer to "Great Lakes navigation improvements" throughout the Bill. Great Lakes ports are adamantly opposed to excluding the Great Lakes/St. Lawrence Seaway system from being an integral and equitable component of the U.S. navigation system."

Sec. 102(a)(6), Pg. 4, Lines 29-34 - Replace Lines 29-34 with the following:

> "(6) Eligible navigation facility. - The term 'eligible navigation facility' shall mean any lock, channel, harbor or other navigation improvement operated or maintained by the United States government or agency thereof, including those on the Great Lakes/St. Lawrence Seaway System, which lock, channel, harbor or other navigation improvement, aids or is utilized in the transportation of commercial cargo in domestic or foreign waterborne commerce by means of deep-draft commercial vessels requiring 20-feet nominal depth to ensure safe passage at mean low tide."

Comment: We included the term "Great Lakes/St. Lawrence Seaway System" within the definition for clarity, but removed referral to the "Great Lakes navigation improvement" to eliminate the necessity of repeatedly mentioning it in the Bill.

Sec. 102(a)(19), Pg. 6, - Between Lines 34 and 35 - Insert the following subparagraph between Lines 34 and 35:

> "(19) Great Lakes/St. Lawrence Seaway System. -- The term 'Great Lakes/St. Lawrence Seaway System' shall mean any lock, channel, harbor or other navigational facility located in the Great Lakes of the United States or their connecting waterways, including but not limited to, the Detroit River, Saint Clair River, Lake St. Clair, the Saint Marys River, the St. Lawrence Seaway and any harbors of refuge."

Comment: Clarification.

TITLE II.

Sec. 201(b)(4)(A), Pg. 8, Lines 6-19 - Delete Lines 6 through 9 in their entirety. On Line 10, delete notation "(ii)". On Line 12 change notation "(I)" to "(i)". On Line 14 change the clause "Great Lakes navigation improvements" to "eligible navigation facilities" and change notation "(II)" to "(ii)". On Lines 16 and 19 delete reference to "(ii)".

Comment: Revised to comply with earlier change of definition in Sec. 102(a)(6).

TITLE III.

Sec. 301(a)

Page 11, Lines 19 and 20 - Change title of Sec. 4232 to "Tax on use of navigation facilities operated or maintained by the United States government, or agency thereof."

Comment: Consistency with previous change in definition.

Page 12, Lines 6 through 9 - Change title of Section 4232 to "Tax on use of navigation facilities operated or maintained by the United States government, or agency thereof" on Lines 6 and 7. On Line 9 replace the clause "Great Lakes navigation improvement" with "eligible navigation facility."

Comment: Consistency with previous changes to fully integrate the Great Lakes/St. Lawrence Seaway system into the U.S. navigation system.

Page 12, Line 28 - The rate of tax as stated is 5 mills.

Comment: Should this be 5/10ths of a mill or $.0005 to be consistent with rate of tax in other portions of the Bill.

Page 12, Line 38 and Page 13, Line 1 - Delete the words "Great Lakes navigation improvement." and insert "eligible navigation facility."

Comment: Consistency with previous change.

Page 13, Line 35 - Delete the words "Great Lakes" and insert "U.S. deep-draft navigation system".

Comment: Consistency with eliminating unnecessary repetition of the term Great Lakes/St. Lawrence Seaway System.

Page 15, Lines 6-17 - Delete this subsection in its entirety.

Comment: Besides being ambiguous, in that, as written, it is unclear as to whether the diversion was referring to the vessel or the cargo, this section of S.865 is viewed by the Canadian Ports and Traffic Development Committee as a provision "designed to concentrate trade at U.S. ports and prevent or discourage diversionary routes through other systems." According to this committee of national organizations concerned with the greater use of Canadian port traffic facilities, the Canadian embassy in Washington has been asked to voice serious concern that this clause contravenes U.S. obligations under GATT to allow freedom of transit and interferes with normal commercial decision-making in international trade. Even if this is the intent of subsection (e), it appears to be unenforceable and should be deleted rather than unduly risk polarizing the Canadians against the entire Bill. (See Appendix A regarding this issue.).

Page 16, Lines 9 - 14 - Delete in entirety and insert the same change in term and definition provided for Sec. 102(a)(6).

Comment: Consistency with previous change.

Page 16, Lines 34 and 35 - On Line 34 insert the word "either" before word "section." On Line 35 delete the comma and insert the word "or".

Comment: Clarification.

Page 17, Lines 8 - 18 - Delete Line 8. On Line 9 delete notation "(I)". On Line 10 insert word "eligible" before "deep-draft". On Lines 11 and 12 delete the word "Great Lakes navigation improvements" and insert "all eligible navigation facilities." On Line 15 delete word, "plus." Delete Lines 16 through 18 in their entirety.

Comment: Consistency with previous changes.

Page 17, Line 30 - The term "eligible deep-draft commercial channels and harbors" was never defined in Section 102(a) of this Act.

Comment: Self-explanatory.

Page 18, Line 27 - Delete reference to notation "(A)."

Comment: Self-explanatory.

Page 18, Lines 36 - 38 and Page 19, Lines 1 - 4 - Delete in their entirety and replace with the following:

> "(a) The charges or tolls levied under Section 8 of the Act of May 13, 1954 are hereby cancelled. The St. Lawrence Seaway Development Corporation will collect the uniform national vessel tax on any qualified commercial cargo pursuant to Section 4232 of the Internal Revenue Code of 1954, as amended and as directed by the Secretary."

Comment: Fully integrates the St. Lawrence Seaway Development Corporation into the new user fee system.

Page 19, Line 7 - Change "Section 12 of this chapter" to "Section 13(a) of this Act."

Comment: Consistency with previous change.

RFH/DLR/rac

APPENDIX A
O/F: 155-C-2

Canadian Ports and Traffic Development Committee
Comité d'expansion des ports et du trafic au Canada

May 4, 1983

TO ALL MEMBERS

U.S. BILLS S-865 and S-970

I am enclosing a summary brief prepared by Marine Administration concerning two bills recently presented to the United States Senate. The bills basically are proposing the imposition of user fee charges to recover certain operation and maintenance costs. You will note however that S-865 includes a provision apparently designed to concentrate trade at U.S. ports and prevent or discourage diversionary routes through other systems. The full text of this provision is as follows:

> "Unlawful Diversion. -.It shall be unlawful for any person engaged in waterborne commerce knowingly to divert or cause to be diverted any waterborne commercial cargo destined for use or consumption in United States from a port or ports within the United States to a port or ports outside of the United States for purpose of avoiding tax imposed under section 4231 of this sub-chapter. Any person in violation of this sub-chapter shall be subject to a civil penalty not/not to exceed double the amount of tax which otherwise would have been imposed under section 4231, and any cargo found to have been so diverted shall be subject to seizure at the point of entry of such cargo into the United States, and shall not/not be released except upon payment of the penalty provided herein."

Our information at present is that, of the two bills, S-865 has the better chance of approval.

The implication for Canadian ports of this provision is of course obvious and its direction does not differ in effect from the Biaggi bill and other U.S. legislation to which the Committee has previously given attention. Our embassy in Washington has been asked to voice serious concern that the clause contravenes U.S. obligations under GATT to allow freedom of transit and interferes with normal commercial decision - making in international trade.

.../2

The foregoing is for your information and any comments or action you feel would be appropriate for members to take independently. I have copies of each bill in detail which along with any other information shall be provided interested members upon request. I am also enclosing trans-border statistics for the third and fourth quarters of 1982 which regretfully were not distributed earlier.

F.T. E

F.T. Elmitt
Secretary
(613) 992-0457

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c.c. J.M. Tessier

SUMMARY BRIEF

Proposed Port User Charge Legislation
(Bills S-865 and S-970)

GENERAL

- Senators Hatfield and Moynihan have each submitted before the Senate Bills S-865 and S-970 respectively, devoted to the new port user fee legislation aimed at putting the development and maintenance of U.S. ports on a new footing.

BACKGROUND ON BILL S-865

- Bill S-865 contains user charges to be raised uniformly throughout the country by fee based on the value of foreign and domestic trade cargo moving in and out of U.S. ports. The fees were designed to raise some 40 percent of the operations and maintenance costs, which the administration's Office of Management and Budget recommended that the percentage be raised to a higher level, but did not specify by how much.

- The Bill has a punitive section to deal with attempts to bypass U.S. ports or otherwise evade payment of the proposed new tax. It provides that if a vessel should attempt to leave a U.S. port without payment of the required tax it "shall be subject to seizure".

- Further, to divert cargoes away from a U.S. port to avoid the charges would carry a "civil penalty not to exceed double the amount of tax which otherwise would have been imposed, and any cargo found to have been so diverted shall be subject to seizure at the point of entry of such cargo into the United States, and shall not be released except upon payment of the penalty provided herein".

BACKGROUND ON BILL S-970

- Bill S-970 would assess the user charges on a tonnage basis. The fees, which would be imposed on a uniform basis at all ports other than those on the inland waterways, would be phased in over a five-year period, amounting to a maximum of.16 cents a ton.

- Like Bill S-865, this Bill has a punitive section to deal with "any vessel engaged in foreign trade to depart or attempt to depart from any United States waters without making payment in full for all tonnage fees". Such a vessel "shall be subject to seizure".

.../2

- The following clause (Section 106a) is unclear as to whether it implies violations with respect to cargo diversions.

> "The Secretary shall establish any reasonable requirements for data collection and vessel right-of-entry that is needed in developing fee schedules and determining violations".

POSITION

- There are two major differences between Bills S-865 and S-970. The latter will assess the user charges on a tonnage basis instead of on the value of the cargo. Also, it does not have an "unlawful diversion" clause.

Shipping Policy Branch
LGM/GM/mr

May 3, 1983

CANADIAN PORTS AND TRAFFIC DEVELOPMENT COMMITTEE

Transborder Container Movements - Period October 1 to December 31, 1982 (in twenty-foot equivalent units)

	East Cost A	East Cost B	West Coast A	West Coast B	TOTAL	Accumulative Total January - Dec./82
1. Number of loaded containers, discharged at Canadian ports for Canadian destinations	29 632.00	0	6 689.00	0	36 321.00	160 095.00
2. Number of loaded containers, discharged at Canadian ports for U.S. destinations	11 801.00	0	21.00	0	11 822.00	53 869.00
3. Number of loaded containers, discharged at U.S. ports for Canadian destinations and which enter Canada in Rail Service	800.00	87.50	669.00	1 032.25	2 588.75	10 144.25
4. Number of loaded containers, discharged at U.S. ports for Canadian destinations and which enter Canada in Highway Service	611.00	3 148.00	7 390.00	2 657.50	13 806.50	49 441.00
5. Number of containers loaded in Canada exported through U.S. ports	2 256.00	3 883.00	3 025.00	1 709.25	10 873.25	40 954.00
6. Number of containers loaded in U.S. exported through Canadian ports	12 020.00	0	146.00	0	12 166.00	46 335.00
7. Number of containers loaded in Canada exported through Canadian ports	48 847.00	0	10 100.00	0	58 947.00	247 200.00

Note "A" - By vessels calling Canadian ports only or Canadian and U.S.A. ports.
"B" - By vessels scheduled to call at U.S.A. ports only.

TRANSBORDER MOVEMENTS

Recapitulation	October - December 1982	October - December 1981	Difference 1982
Total Canadian	-3 280.50	+11 413.50	-14 694.00
East Coast	+13 035.50	+24 205.50	-11 170.00
West Coast	-16 316.00	-12 792.00	-3 524.00

Accumulative	Jan. - December 1982	Jan. - December 1981	Difference 1982
Total Canadian	-335.25	+35 817.00	-36 152.25
East Coast	+53 157.25	+87 842.00	-34 684.75
West Coast	-53 492.50	-52 025.00	-1 467.50

Source: Revenue Canada, Customs and Excise.

CANADIAN PORTS AND TRAFFIC DEVELOPMENT COMMITTEE

Transborder Container Movements - Period July 1st to September 30th, 1982 (in twenty-foot equivalent units)

	East Coast		West Coast		TOTAL	Accumulative Total
	A	B	A	B		January - Sept./82
1. Number of loaded containers, discharged at Canadian ports for Canadian destinations	29 980.00	0	7 902.00	0	37 882.00	123 774.00
2. Number of loaded containers, discharged at Canadian ports for U.S. destinations	13 611.00	0	23.00	0	13 634.00	42 047.00
3. Number of loaded containers, discharged at U.S. ports for Canadian destinations and which enter Canada in Rail Service	1 022.00	914.75	470.00	917.25	3 324.00	7 555.50
4. Number of loaded containers, discharged at U.S. ports for Canadian destinations and which enter Canada in Highway Service	521.00	2 366.25	5 926.00	2 148.50	10 961.75	35 634.50
5. Number of containers loaded in Canada exported through U.S. ports	3 316.00	3 674.00	1 536.00	630.00	9 156.00	30 080.75
6. Number of containers loaded in U.S. exported through Canadian ports	9 277.00	0	234.00	0	9 511.00	34 169.00
7. Number of containers loaded in Canada exported through Canadian ports	47 494.00	0	8 802.00	0	56 296.00	188 253.00

Note "A" - By vessels calling Canadian ports only or Canadian and U.S.A. ports.
"B" - By vessels scheduled to call at U.S.A. ports only.

TRANSBORDER MOVEMENTS

Recapitulation	July - September 1982	July - September 1981	Difference 1982
Total Canadian	- 296.75	+10 189.25	-10 486.00
East Coast	+11 074.00	+21 582.00	-10 508.00
West Coast	-11 370.75	-11 392.75	+20.00
Accumulative	**Jan. - September 1982**	**Jan. - September 1981**	**Difference 1982**
Total Canadian	+2 945.25	+24 403.50	-21 458.25
East Coast	+40 121.75	+63 636.50	-23 514.75
West Coast	-37 176.50	-39 233.00	+2 056.50

Source: Revenue Canada, Customs and Excise.

Ports Canada
Information Centre
Marketing Branch

Star Print

98th CONGRESS
1st Session

S.__________

IN THE SENATE OF THE UNITED STATES

MR. Hatfield (for himself, and) Mr. Byrd, Mr. Warner, Mr. Thurmond, Mr. Mattingly, Mr. Trible, Mr. Ford, Mrs. Hawkins, Mr. Murkowski, Mr. Nunn, Mr. Cochran, and Mr. Randolph introduced the following bill; which was read twice and referred to the Committee on ______________________________.

A BILL

To establish a nationally uniform deep-draft vessel tax for the purpose of financing operations and maintenance of deep-draft commercial channels and harbors; to fund a percentage of new channel improvements; and to provide an expedited procedure for the authorization and permitting of navigation improvement projects and related landside facilities in deep-draft ports, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the "Deep-Draft Navigation Act of 1983".

TITLE I--FINDINGS AND PURPOSES; DEFINITIONS

Sec. 101 (a). The Congress finds and declares that--

(1) it is in the national interest to develop and maintain a viable marine transportation system for the United States, including an integrated network of deep-draft commercial seaports adequate to accommodate the needs of foreign and domestic commerce, promote economic stability and provide for the national security of the United States and its allies;

(2) the current national system of deep-draft waterborne transportation has been accomplished through a productive partnership in which the Federal Government has developed and maintained the navigability of deep-draft channels and harbors and

has thus facilitated maritime commerce, while States, port authorities and private commercial enterprises provided landside facilities and other improvements necessary to accommodate waterborne commerce, and that the continuation of such partnership is in the national interest;

(3) while each deep-draft port in the United States has its own concerns, problems and opportunities, which affect the flow of foreign and domestic commerce, it is in the public interest to treat each individual port as an integral component of a national port system to facilitate the waterborne commerce of the Nation;

(4) ports in the United States are significant generators of national and regional revenue and customs receipts and are promoters of commerce which improves the United States' balance of trade, providing economic stability and growth; domestic and foreign shippers, producers, and consumers have been well-served by the Nation's unified seaport system;

(5) there have been lengthy and costly delays in the authorization of, and the issuance of required Federal permits for, new deep-draft navigation improvement projects; there is a significant backlog of economically justified projects which, when constructed, will enhance the overall efficiency of the Nation's waterborne transportation system; and

(6) due to the general state of the Nation's economy and Federal budgetary restraints there is a need to more directly recover a portion of the Federal costs associated with the operation, maintenance and improvement of deep-draft commercial channels and harbors.

(b) It is the purpose of this Act to--

(1) provide a national policy that recognizes the significant role and importance of waterborne commerce to the economic well-being of the United States;

(2) establish a procedure which facilitates the orderly authorization and funding of necessary maintenance, operation and construction projects for deep-draft commercial channels and harbors and which provides consistency, predictability and promptness in the issuance of required Federal permits with respect to such projects;

(3) promote the efficient movement of domestic and foreign

waterborne commerce by providing the means to recover a portion of the costs of operation and maintenance of deep-draft commercial channels and harbors through the imposition of a nationally uniform tax upon the use of such channels and harbors by deep-draft commercial vessels, by establishing a Trust Fund to efficiently administer funds collected, and by maintaining a viable Federal, state and industry partnership for the continued operation, maintenance and improvement of deep-draft commercial channels and harbors, while also ensuring that such cost recovery and funding programs do not--of themselves--introduce any new elements creating competitive disadvantages among commercial seaports or impair the viability of any commodity or item of commerce in the World market; and

(4) integrate the operation, maintenance and improvement of the United States section of the /Saint Lawrence Seaway ~~and--Great-Lakes-ports~~ into the nationally uniform system of financing deep-draft navigation improvement projects and deep-draft commercial channel and harbor operations and maintenance costs.

DEFINITIONS

Sec.102 (a) For purposes of this Act--

Either insert word "eligible" or separate definition.

(1) /Deep-draft commercial channel or harbor.--The term "deep-draft commercial channel or harbor" shall mean any channel, ~~or~~ harbor, lock /or element thereof, with a depth exceeding 20 feet at mean low tide, which channel, harbor, lock /or element is open to public navigation, and which is utilized in the transportation of commercial cargo in domestic or foreign waterborne commerce by means of deep-draft commercial vessels.

(2) Deep-draft commercial vessel.-- The term "deep-draft commercial vessel" has the meaning given to such term by section 4237 (2) of the Internal Revenue Code of 1954, as amended.

(3) Deep-draft navigation improvement project.--The term "deep-draft navigation improvement project" shall mean the dredging or other construction required to deepen, widen or otherwise improve an eligible deep-draft commercial channel or harbor, or any element thereof, to a depth or width greater than the greatest depth or width actually maintained during the five-year period immediately preceding the enactment of this Act.

(4) Eligible deep-draft navigation improvement project.--The term "eligible deep-draft navigation improvement project" shall mean a deep-draft navigation improvement project authorized by Congress.

(5) Eligible operations and maintenance.--

(A) In general.--The term "eligible operations and maintenance" shall mean all dredging or other mechanical functions necessary to maintain the nominal depth and width of any eligible deep-draft commercial channel or harbor, ~~including any eligible deep-draft commercial channels or harbors located within the Great Lakes,~~ at the lesser of--

(i) the nominal depth or width authorized by Congress for such channel or harbor or any element(s) thereof, or,

(ii) the greatest nominal depth or width actually maintained for such channel or harbor prior to enactment of this Act; or the nominal depth or width which the United States Army Corps of Engineers has agreed to maintain for such channel or harbor pursuant to a memorandum of agreement entered into in accordance with subsection (a) of section 402 of thIs Act.

(B) ~~Saint Lawrence Seaway.--As applied to the Saint Lawrence Seaway and any Great Lakes navigation improvement, the term "eligible operations and maintenance" shall include all operations, maintenance, repair and rehabilitation, including maintenance dredging, reasonably necessary to keep such Seaway or navigation improvements operated or maintained by the Saint Lawrence Seaway Development Corporation or the United States in operation and reasonable state of repair.~~ As applied to any eligible navigation facilities operated or maintained by the United States government or agency thereof, including any public or quasi-public corporation operating under a charter from the United States, the term "eligible operations and maintenance" shall include all operations, maintenance, repair and rehabilitation, including maintenance dredging, reasonably necessary to keep such eligible navigation facilities in operation and reasonable state of repair.

(6) ~~Great Lakes navigation improvement.--The term "Great Lakes navigation improvement" shall mean any lock, channel, harbor or navigational facility located in the Great Lakes of the United States or their connecting waterways, including, but not limited to, the Detroit River, Saint Clair River, Lake Saint Clair and the Saint Marys River, but shall not include the Saint Lawrence Seaway.~~ Eligible navigation facility. The term "eligible navigation facility" shall mean any lock, channel, harbor or other navigation improvement operated or maintained by the United States government or agency thereof, including those on the Great Lakes/St. Lawrence Seaway System, which lock, channel, harbor or other navigation improvement, aids or is utilized in the transportation of commercial cargo in domestic or foreign waterborne commerce by means of deep-draft commercial vessels requiring 20-feet nominal depth to ensure safe passage at mean low tide.

(7) Fiscal year. -- The term 'fiscal year' means the 1-year period beginning on October 1 of each calendar year.

(8) Federal share.--The term "federal share" shall mean the percentage of the project cost of a deep-draft navigation

improvement payable by the United States out of the Navigation Improvement Account of the Deep-Draft Navigation Trust Fund established under subsection 201(a)(1) of this Act.

(9) Local share.--The term "local share" shall mean the percentage of the project cost of a deep-draft navigation improvement project payable by the port authority or authorities sponsoring the project under a memorandum of agreement entered into in accordance with section 401(a) of this Act.

(10) Landside facilities.--The term "landside facilities" shall mean facilities for the transfer, handling or storage of commercial cargo at the point of transfer between deep-draft waterborne transportation and land or shallow-draft waterborne transportation.

(11) Nominal depth.--The term "nominal depth" shall mean, in relation to the stated depth for any deep-draft navigation improvement project, such depth, including any greater depths which must be maintained for any channel or harbor or element(s) thereof included within such project in order to ensure the safe passage at mean low tide of any vessel requiring the stated depth.

(12) Person.--The term "person" shall mean a natural person, partnership, corporation or other entity organized for the transaction of business for profit, and any government or governmental unit or agency thereof engaged in waterborne commerce, other than the governments of the United States, Canada, a State, a political subdivision of a State, or any agency thereof, but shall not include a public or quasi-public corporation or other entity operating under a charter from or under the authority of the United States, Canada, a State, a political subdivision of a State or an interstate authority, agreement or compact.

(13) Port.--The term "port" shall mean any place located on or adjacent to a deep-draft channel or harbor and having facilities for the loading or unloading of commercial cargo onto or from a deep-draft commercial vessel, including a commercial vessel used in the transhipment of commercial cargo between a deep-draft commercial vessel and a port.

(14) Port authority.--The term "port authority" shall mean--

(A) a State;

(B) a political subdivision of a State; or

(C) any authority established for the purpose of operating, promoting, developing or managing landside facilities at a port or ports under an interstate compact or under a law or ordinance of, or charter issued by, a State or political subdivision thereof; and

(D) any individual or other nongovernmental entity engaged in the operation of a deep-draft channel or harbor for the commercial waterborne transportation of items or units of cargo by means of vessels with a draft exceeding twenty feet.

(15) Project cost.--The term "project cost" or "total project cost" shall mean all essential costs associated with the construction of a deep-draft navigation improvement, including, but not limited to, the cost of dredging or other mechanical functions and all costs actually incurred by the local project sponsor for, dredge spoil disposal, diking, relocation and acquisition of any necessary lands, easements or rights of way.

(16) Standard coastal and Great Lakes ranges.--The term "standard coastal and Great Lakes ranges" shall mean those 22 coastal areas designated as such in the Corps of Engineers Institute of Water Resources National Waterway Study.

(17) State.--The term "State" shall mean any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States exercises jurisdiction.

(18) United States.--The term "United States" shall mean all area included within the territorial boundaries of the United States, including the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States exercises jurisdiction.

19) Great Lakes/St. Lawrence Seaway System -- The term "Great Lakes/St. Lawrence Seaway System" shall mean any lock, channel, harbor or other navigational facility located in the Great Lakes of the United States or their connecting waterways, including but not limited to, the Detroit River, Saint Clair River, Lake St. Clair, the Saint Marys River, the St. Lawrence Seaway and any harbors of refuge.

TITLE II--CREATION OF TRUST FUND TO ADMINISTER ACCOUNTS FOR OPERATIONS AND MAINTENANCE, IMPROVEMENT PROJECTS AND LOCAL-SHARE CREDITS

Sec.201.(a)(1) Notwithstanding any other provision of law, there is established in the Treasury of the United States a trust fund to be known as the Deep-Draft Navigation Trust Fund (hereinafter referred to as the 'Trust Fund') consisting of three individual Accounts as follows--

(A) the Operations and Maintenance Account;

(B) the Navigation Improvement Account; and

(C) the Special Credit Account.

(2) The Trust Fund shall remain available without fiscal year limitation and the amounts therein may be used only as provided in this section.

(3) The Secretary of the Army shall be the trustee of the Trust Fund and after consultation with the Secretary of the Treasury, shall report to Congress not later than March 1 of each year, on the operation and status of the Trust Fund during the preceding fiscal year and on the expected operation and status of the Trust Fund during the three fiscal years immediately following such fiscal year.

Operations and Maintenance Account

(b)(1) The Operations and Maintenance Account of the Trust Fund shall consist of the amounts transferred to such account under paragraph (2), and any other amounts as Congress may from time to time appropriate to such account. Funds in such account may only be used for appropriations authorized under paragraph (4) of this subsection and for the transfers and provision of credits allowed under subsection (d) of this section.

(2) The Secretary of the Treasury shall transfer each month from the general fund of the Treasury of the United States to the Operations and Maintenance Account of the Trust Fund an amount equal to the sum of --

(A) the amounts received into such general fund during the preceding month from the taxes imposed by sections 4231, 4232, and 4233 of the Internal Revenue Code of 1954, as amended, and;

(B) such amounts as shall be remitted to the Treasury of the United States during the preceding month by the Saint Lawrence Seaway Development Corporation pursuant to section 13 (b) of the Act of May 13. 1954 (68 Stat. 92), as amended by this Act.

(4)(A) There are authorized to be appropriated out of the Operations and Maintenance Account of the Trust Fund for each fiscal year such sums as may be necessary to pay--

~~(i) 100 percentum of the eligible operations and maintenance costs of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation for such fiscal year; and~~

~~(ii)~~ 40 percentum of the eligible operations and maintenance costs of--

(i) ~~(I)~~ all eligible deep-draft commercial channels and harbors within the United States; and

(ii) ~~(II)~~ all eligible navigation facilities ~~Great Lakes navigation improvements~~ operated or maintained by the United States.

(B) For the purpose of applying subparagraph (A)(ii) with respect to the fiscal year beginning October 1, 1983, "20 percentum" shall be substituted for "40 percentum."

(C) For the purpose of applying subparagraph (A)(ii) with respect to the fiscal year beginning on October 1, 1984, "30 percentum" shall be substituted for "40 percentum."

(D) There are authorized to be appropriated out of the General Fund of the Treasury of the United States for each fiscal year such sums as may be necessary to pay the balance of all eligible operations and maintenance costs not provided by payments from the operation and maintenance account of the Trust Fund as provided in this paragraph.

Navigation Improvement Account

(c)(1) The Navigation Improvement Account of the Trust Fund shall consist of the amounts transferred to such account by the Secretary of the Treasury under paragraph (2) of this subsection and paragraphs (4) and (5) of subsection (d), and such other amounts as Congress may from time to time appropriate to such account.

(2) Not later than October 31 of each year, the Secretary of the Treasury shall transfer from the general fund of the Treasury of the United States to the Navigation Improvement Account of the Trust Fund a portion of all amounts received into such general fund

from the tariffs imposed under the Tariff Schedules of the United States which is equal to 85 percentum of that amount authorized to be transferred by the Secretary to the Operations and Maintenance Account of the Trust Fund under subsection (b)(2) for such fiscal year.

(3) There are authorized to be appropriated out of the Navigation Improvement Account of the Trust Fund such sums as may be necessary to pay the federal share of any eligible deep-draft navigation improvement projects.

Special Credit Account

(d)(1) The Special Credit Account of the Trust Fund shall consist of the amounts transferred to such account under paragraph (2). Funds in such account may only be used to provide the credits allowed pursuant to paragraph (3), and any amounts credited to the subaccount of a qualified port authority under paragraph (3) may only be used to offset the local share of any eligible deep-draft navigation improvement project sponsored by such qualified port authority.

(2) At the end of each fiscal year, the Secretary of the Army shall transfer the unexpended balance remaining in the Operations and Maintenance Account of the Trust Fund to the Special Credit Account of the Trust Fund.

(3)(A) For each fiscal year, the Secretary of the Army shall credit to a subaccount maintained within the Special Credit Account of the Trust Fund for the benefit of a qualified port authority the amount he determined with respect to such qualified port authority under subparagraph (B) for such fiscal year.

(B) The amount of the credit allowed under subparagraph (A) for the benefit of a qualified port authority in any fiscal year shall be an amount equal to the product of--

(i) the special credit percentage for such fiscal year, multiplied by

(ii)the amount by which the aggregate amount of the vessel tax assessed and collected at any eligible ports operated under the jurisdiction of such qualified port authority in such fiscal year pursuant to section 4235 (a) (1) of the Internal Revenue Code of 1954; exceeds the costs of operation and maintenance of all eligible deep-draft commercial channels and harbors located at, or adjacent to, such ports for such fiscal year

(C) For the purposes of this paragraph --

(i) the term 'qualified port authority' shall mean any port authority for which, in any fiscal year, the aggregate amount of tax assessed and collected at any eligible ports operated under the jurisdiction of such qualified port authority pursuant to section 4235 (a) (1) of the Internal Revenue Code of 1954; exceeds the cost of eligible operations and and maintenance for all eligible deep-draft commercial channels and harbors located at or adjacent to such ports for such fiscal year;

(ii) the term 'special credit percentage' shall mean for each fiscal year the percentage ratio of the amounts transferred to the Special Credit Account under paragraph (2) to the amount by which the aggregate amount of tax assessed and collected at any eligible ports operated under the jurisdiction of such qualified port authority pursuant to section 4235 (a)(1) of the Internal Revenue Code of 1954; exceeds the costs of eligible operations and maintenance for all eligible deep-draft commercial channels and harbors located at or adjacent to such ports for such fiscal year.

(D) Amounts credited to the subaccount maintained within the Special Credit Account of the Trust Fund for the benefit of a qualified port authority may be used by such qualified port authority only for the purpose of paying the local share of any eligible deep-draft navigation improvement project sponsored by such qualified port authority.

(4) Any amounts credited to a subaccount maintained within the Special Credit Account of the Trust Fund for the benefit of a qualified port authority which have not been expended within five fiscal years shall be transferred to the Navigation Improvement Account of the Trust Fund.

(5) If, in any fiscal year, no port authority meets the definition of 'qualified port authority' for the purpose of this subsection, then such amounts as would have been transferred to the Special Credit Account of the Trust Fund under paragraph (2) shall

be transferred instead to the Navigation Improvement Account of the Trust Fund.

(e) After the Secretary has made the transfers required under subsections (b)(2), and (c)(2), proper adjustments shall be made in any amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the actual revenues from such taxes for preceding quarters.

TITLE III--TAX ON DEEP-DRAFT COMMERCIAL VESSELS USING DEEP-DRAFT COMMERCIAL CHANNELS, HARBORS AND NAVIGATIONAL FACILITIES; SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

Sec.301.(a) Chapter 33 of the Internal Revenue Code of 1954 (relating to facilities and services) is amended by inserting before subchapter B the following new subchapter:

"SUBCHAPTER A--DEEP-DRAFT COMMERCIAL CHANNELS, HARBORS AND NAVIGATIONAL FACILITIES

"Sec.4231. Tax on the use of deep-draft commercial channels and harbors.
"Sec.4232. Tax on use of navigation facilities operated or maintained by the United States government, or agency thereof. ~~Tax on the use of Great Lakes navigation improvements.~~
"Sec.4233. Tax on the use of deep-draft commercial channels or harbors for purposes other than loading or unloading commercial cargo.
"Sec.4234. Reporting Requirements.
"Sec.4235. Collection of Tax.
"Sec.4236. Violations; Enforcement.
"Sec.4237. Definitions.

Sec.4231. TAX ON THE USE OF DEEP-DRAFT COMMERCIAL CHANNELS AND HARBORS.

"(a) Imposition of Tax.--There is hereby imposed a tax on the use of any deep-draft commercial channel or harbor within the United States by a deep-draft commercial vessel.

"(b) Rate of Tax.--The amount of the tax imposed by subsection (a) with respect to any deep-draft commercial vessel shall be equal to the product of--

"(1) the uniform national vessel charge for the fiscal year, multiplied by

"(2) the value of any qualified commercial cargo loaded onto or unloaded from such vessel at a port or ports within the United States.

(c) Intraport transfer -- The tax imposed under this section shall not apply to any vessel to the extent the cargo unloaded from such vessel was loaded upon such vessel at the same port.

"Sec.4232. Tax on use of navigation facilities operated or maintained by the United States government, or agency thereof. ~~TAX ON THE USE OF GREAT LAKES NAVIGATION GREAT LAKES NAVIGATION IMPROVEMENTS.~~

"(a) Imposition of Tax.--There is hereby imposed a tax on the use of any Great Lakes navigation improvement operated or maintained by the United States by a deep-draft commercial vessel.

"(b) Rate of Tax.--The amount of the tax imposed by subsection (a) shall be equal to the product of--

"(1) the uniform national vessel charge for the fiscal year, multiplied by

"(2) the value of all qualified commercial cargo contained in such vessel at the time of such use.

Sec.4233. TAX ON THE USE OF DEEP-DRAFT COMMERCIAL CHANNELS OR HARBORS FOR PURPOSES OTHER THAN LOADING OR UNLOADING COMMERCIAL CARGO.

"(a) Imposition of Tax.--There is hereby imposed a tax on each use of any deep-draft commercial channel or harbor within the United States for a purpose or purposes other than the loading or unloading of commercial cargo, including, but not limited to, convenience, bunkering, refitting or repair.

"(b) Rate of Tax.--The amount of the tax imposed by subsection (a) shall be determined by referance to a uniform national schedule of vessel charges established by the Secretary of the Treasury; provided however, that the rate of tax shall not exceed $0.005 per dead weight ton, and such tax shall be imposed upon such vessel not more than three times in any fiscal year.

Should this be .0005 as stated it is 5 mills.

Sec.4234. REPORTING REQUIREMENTS.

"(a) Declaration Requirements.--Any person, or agent of such person, who shall cause qualified commercial cargo to be transported by means of a deep-draft commercial vessel shall, prior to the loading of such cargo, provide to the Master of such deep-draft commercial vessel a sworn declaration of the value of such qualified commercial cargo.

"(b) Reporting Requirements.--(1) Upon the loading or unloading of any commercial cargo; or (2) upon passage through any eligible ~~Great Lakes~~

navigation facility ~~navigation improvement~~ operated or maintained by the United States, the Master of a deep-draft commercial vessel shall report the declared value of all qualified commercial cargo loaded onto, unloaded from or contained in such vessel to the United States Customs Service or such other agency as the Secretary may designate for such purpose.

"(c) Liability Provision--The Master of a deep-draft commercial vessel shall be entitled to rely upon the accuracy of any sworn declaration of value for purposes of rendering the tax imposed by Section 301 of this Act, and the owner of such vessel shall be liable for the payment of any additional vessel tax under such section unless he knew or had reason to know of the inaccuracy of such declaration of value.

"(d) Powers of Secretary.--For the purpose of determining whether any person is in violation of subsection (a) of this section--

"(1) The Secretary may require any person engaged in waterborne commerce to (A) establish and maintain such records, (B) submit such reports, and (C) provide such other information as the Secretary may reasonably require.

"(2) the Secretary may also utilize any documentation required to be submitted pursuant to section 11 of the Act of September 22, 1922 (42 Stat. 1043); and

"(3) the Secretary, or his designee, shall have a right of entry to, upon, or through any vessel or any other premises of such person and may have access to and make copies of any records or other documents, not otherwise privileged, within the possession or control of such person, his agents or assigns.

"Sec.4235. COLLECTION OF TAX.

"(a) Assessment and Collection.--The Secretary, acting through the United States Customs Service or such other agency as the Secretary may designate for such purpose, is authorized to assess and collect the taxes imposed under sections 4231, 4232 and 4233 of this subchapter.

"(1) the tax imposed under section 4231 shall be assessed and collected at the port of loading or unloading;

"(2) the tax imposed under section 4232 shall be assessed and collected at such point or points within the U.S. deep-draft navigation system ~~Great Lakes~~ as the Secretary may designate by regulation or otherwise.

"(3) the tax imposed under section 4233 shall be assessed and collected pursuant to regulations promulgated by the Secretary for this purpose.

"(b) Liability for Tax.--Liability for the payment of the taxes imposed under sections 4231, 4232 and 4233 of this subchapter shall be imposed on the owner of such vessel, and, until paid, such taxes shall constitute a valid lien against such vessel in favor of the United States.

"Sec. 4236. VIOLATIONS; ENFORCEMENT.

"(a) Finding by Secretary.--Whenever, on the basis of any information available, the Secretary finds that any person is in violation of any requirement of this subchapter, the Secretary shall order such person to comply with this subchapter, including payment of any taxes which the Secretary determines to have been wrongfully withheld, with interest at the rate specified under section 6621 of the Internal Revenue Code of 1954, as amended. Thirty days after the date of an order from the Secretary to a person to be in compliance with this subchapter, and after an opportunity for a hearing, it shall be unlawful for that person to engage in waterborne commerce during any period in which that person is in violation of any requirement of this subchapter.

"(b) Action by Attorney General.--Upon the request of the Secretary, the Attorney General may bring a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $200,000, or both, whenever any person violates any requirement of this subchapter or fails or refuses to comply with any order issued under subsection (a). Such penalty shall be deposited in the general fund of the Treasury of the United States.

"(c) Jurisdiction and Venue.--Any action under this section may be brought in the district court of the United States for the district in which the defendant resides, does business or is engaged in waterborne commerce, and such court shall have jurisdiction to require compliance, to assess any appropriate taxes or civil penalties as authorized under this subchapter, and grant injunctive or other equitable relief. Any deep-draft commercial vessel on account of which any tax shall have accumulated shall be liable for such taxes and may itself be arrested and proceeded against upon principles applicable to admiralty actions in rem.

"(d) Unlawful Departure.--It shall be unlawful for any vessel engaged in waterborne commerce to depart or attempt to depart from any

United States waters without making payment in full for all taxes imposed under this subchapter. Any vessel engaged in waterborne commerce which departs or attempts to depart from any United States waters without payment of all required taxes shall be subject to seizure by the Secretary.

Ambiguous, unenforceable and risks polarizing the Canadians.

"~~(c) Unlawful Diversion.--It shall be unlawful for any person engaged in waterborne commerce knowingly to divert or cause to be diverted any deep-draft commercial vessel containing commercial cargo destined for use or consumption in the United States from a port or ports within the United States to a port or ports outside of the United States for the purpose of avoiding the tax imposed under section 4231 of this subchapter. Any person in violation of this subsection shall be subject to a civil penalty not to exceed double the amount of tax which otherwise would have been imposed under section 4231, and any vessel found to have been so diverted shall be subject to seizure by the Secretary, and shall not be released except upon payment of the penalty provided herein.~~

"Sec. 4237. DEFINITIONS.

"For purposes of this subchapter--

"(1) Commercial cargo.--The term 'commercial cargo' shall mean any commodity, class or category of commodities or classification of articles of waterborne commerce, including the carriage or transportation of passengers for hire, but shall not include bunker fuel, ships' stores, sea stores, or the legitimate equipment necessary to the operation of a vessel.

"(2) Deep-draft commercial vessel.--The term 'deep-draft commercial vessel' shall mean a vessel engaged in waterborne commerce which, when fully loaded, requires a channel or harbor of at least 20 feet nominal depth to ensure safe passage at mean low tide, including also vessels of lesser draft engaged in the carriage or transportation of commercial cargo utilizing deep-draft channels or harbors in direct competition with deep-draft commercial vessels; Provided, however, That this term shall not be construed to include any vessel engaged primarily in the ferrying of passengers or vehicles between points within the United States, or vessels engaged primarily in fishing or the cultivation or harvesting of other marine foodstuffs, or vessels owned by the United States government.

"(3) Deep-draft commercial channel or harbor.--The term 'deep-draft commercial channel or harbor' shall mean any channel or harbor, or element thereof, which channel, harbor or element is open to public navigation, and which is utilized in the transportation of commercial cargo in domestic or foreign waterborne commerce by means of deep-draft commercial vessels.

"(4) Fiscal year. -- The term 'fiscal year' shall mean the 1-year period beginning on October 1 of each calendar year.

See change to Sec. 102(a)(6) Pg. 4, Lines 29 through 34.

~~"(5) Great Lakes navigation improvements.--The term 'Great Lakes navigation improvements' shall mean any lock, channel, harbor or navigational facility located in the Great Lakes of the United States or their connecting waterways, including, but not limited to, the Detroit River, Saint Clair River, Lake Saint Clair and the Saint Marys River, but shall not include the Saint Lawrence Seaway.~~

"(6) Person.--The term 'person' shall mean a natural person, partnership, corporation or other entity organized for the transaction of business for profit, and any government or governmental unit or agency thereof engaged in waterborne commerce, other than the governments of the United States, Canada, a State, a political subdivision of a State, or any agency thereof, but shall not include a public or quasi-public corporation or other entity operating under a charter from or under the authority of the United States, Canada, a State, a political subdivision of a State or an interstate authority, agreement or compact.

"(7) Port.--The term 'port' shall mean any place located on or adjacent to a deep-draft channel or harbor and having facilities for the loading or unloading of commercial cargo onto or from a deep-draft commercial vessel, including a commercial vessel used in the transhipment of commercial cargo between a deep-draft commercial vessel and a port.

"(8) Qualified commercial cargo. -- The term "qualified commercial cargo" shall mean, with respect to any vessel, any item or unit of commercial cargo which has not previously been taken into account in determining the amount of tax imposed by either section 4231 or 4232.

"(9) Secretary. -- the term 'Secretary' shall, unless otherwise indicated, mean the Secretary of the Treasury.

"(10) Uniform national vessel charge.--

"(A) In general. -- The term 'uniform national vessel charge' shall mean, with respect to any fiscal year, an amount equal to the lesser of--

(i) 0.06 percentum; or

(ii) the lowest percentage which, when multiplied by the value of all qualified commercial cargo, as projected by the Secretary of the Treasury for the next fiscal year, will equal ~~the sum of--~~

~~(I)~~ 44 percentum of the eligible operations and maintenance costs for all eligible deep-draft commercial channels and harbors within the United States and all eligible ~~Great Lakes~~ navigation facilities ~~navigation improvements~~ operated and maintained by the United States, as estimated by the Secretary of the Army for such fiscal year under section 201(b)(3) of the Deep-Draft Navigation Act of 1983~~, plus~~

~~(II) 100 percentum of the eligible operations and maintenance costs of the Saint Lawrence Seaway for such fiscal year~~.

(B) Transitional Rules.--

(i) Fiscal-year 1984.--For the purpose of applying subparagraph (A)(ii) (I) with respect to the fiscal year beginning on October 1, 1983, '22 percentum' shall be substituted for '44 percentum.'

(ii) Fiscal year 1985.--For the purpose of applying subparagraph (A)(ii)(I) with respect to the fiscal year beginning on October 1, 1984, '33 percentum' shall be substituted for '44 percentum.'

"(11) Eligible operations and maintenance; eligible deep-draft commercial channels and harbors.-- The terms 'eligible operations and maintenance' and (This term was never defined in Sec. 102(a) of this Act.) 'eligible deep-draft commercial channels and harbors' shall have the respective meanings given to such terms by section 102 (a) of this Act.

"(12) United States.--The term 'United States' shall mean all area included within the territorial boundaries of the United States, including the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Marianas, the Trust Territory of the

Pacific Islands, and any other territory or possession over which the United States exercises jurisdiction.

"(13) Value.--The term 'value' shall mean the declared value of any commercial cargo as evidenced by any bill of lading, cargo manifest, contract for carriage or other documentary evidence of value, or, if the cargo shall not have a declared value, the fair market value of the cargo as determined by the Secretary.

"(14) Waterborne commerce.--The term 'waterborne commerce' shall mean any commercial activity relating to the carriage or transportation of commercial cargo by a deep-draft commercial vessel.

(b) The table of subchapters of chapter 33 of such code is amended by inserting before the item relating to subchapter B the following item: "Subchapter A. Deep- Draft Commercial Channels, Harbors and Navigational Facilities."

(c) The amendments made by this section shall not alter, amend or repeal any other provision of law imposing or relating to the imposition of a tax, fee or charge on maritime vessels or on the use of navigable waterways.

(d) The amendments made by this section shall take effect on the day after the date of enactment of this Act.

Saint Lawrence Seaway Development Corporation

Sec.302. The Act of May 13, 1954 (16 Stat. 92) (relating to the Saint Lawrence Seaway) is amended as follows:

(a) Add a new paragraph at the end of section 4(a):

"(13) shall accept such amounts as may be appropriated to the Corporation under subparagraph (b)(4)~~(A)~~ of section 201 of the Deep-Draft Navigation Act of 1983; Provided, however: That such amounts shall be available only for the purpose of operating and maintaining those works which the Corporation is obligated to operate and maintain under subsection (a) of section 3 of this Act."

(b) Add a new section at the end thereof:

"Sec.13. WAIVER OF COLLECTION OF CHARGES OR TOLLS; REMITTAL OF REVENUES TO THE TREASURY OF THE UNITED STATES.

"(a) ~~To the extent that that portion of the charge or toll levied on a vessel for its use of the Saint Lawrence Seaway payable to or on behalf of the United States exceeds the vessel tax which would have been imposed upon~~ The charges or tolls levied under Section 8 of the Act of May 13, 1954 are hereby cancelled. The St. Lawrence Seaway Development Corporation will collect the uniform national vessel tax on any qualified commercial cargo pursuant to Section 4232 of the Internal Revenue

Code of 1954, as amended and as directed by the Secretary.

~~such vessel for its use of a Great Lakes navigation improvement under section 4232 of the Internal Revenue Code of 1954, as amended, the collection of such charge or toll by or on behalf of the United States is waived.~~

"(b) The Corporation shall remit to the Treasury of the United States all revenues derived from the collection of charges or tolls established under section ~~12 of this chapter."~~ 13(a) of this Act."

Sec.303. Not later than two years after enactment of this act, the Secretary of State, in consultation with the Secretary of Transportation, shall initiate discussions with the Government of Canada with the objective of reducing or eliminating all tolls on the international Great Lakes and the Saint Lawrence Seaway, and the Secretary of Transportation shall report to the Congress on the progress of such discussions and on the economic effects upon waterborne commerce in the United States of any proposed reduction or elimination in tolls.

TITLE IV--ESTABLISHMENT OF FEDERAL/LOCAL PARTNERSHIP FOR DEEP-DRAFT NAVIGATION IMPROVEMENT PROJECTS

Sec.401(a). Prior to the submission to Congress of recommendations for the authorization or reauthorization of deep-draft navigation improvement projects under subsection 502(c)(1) of this Act, the Secretary of the Army (hereinafter referred to as the 'Secretary') shall enter into a memorandum of agreement with the port authority or authorities sponsoring such project.

(b) The memorandum of agreement shall contain provisions establishing the responsibilities of each party with respect to the construction and operation of the project, including, but not limited to, a formula for the allocation of project costs between the United States and the port authority or authorities sponsoring the project, to be determined as follows--

(1) The local share of the total project cost for any deep-draft navigation improvement project shall be--

(A) For projects with nominal depths greater than twenty feet, but not exceeding thirty-five feet, twenty percentum;

(B) For projects with nominal depths greater than thirty-five feet, but not exceeding forty feet, twenty-five percentum;

(C) For projects with nominal depths greater than forty feet, but not exceeding forty-five feet, twenty-five percentum, plus one percentum of total project cost for each foot or fraction thereof over forty feet;

(D) For projects with nominal depths greater than forty-five feet, but not exceeding fifty feet, thirty percentum, plus two percentum of total project cost for each foot or fraction thereof over forty-five feet;

(E) For projects with nominal depths greater than fifty feet, but not exceeding fifty-five feet, forty percentum, plus three percentum of total project cost for each foot or fraction thereof over fifty feet;

(F) For projects with nominal depths greater than fifty-five feet, but not exceeding sixty feet, fifty-five percentum, plus four percentum of total project cost for each foot or fraction thereof over fifty-five feet; and

(G) For projects with nominal depths greater than sixty feet, seventy-five percentum.

(2) The local share of the project cost shall be reimbursed to the Treasury of the United States over the life of the project as estimated by the Secretary, but in no event to exceed fifty years from the date of completion of the project. The rate of interest on any indebtedness to the United States incurred as a result of the construction of a deep-draft navigation improvement project shall be determined by the Secretary of the Treasury, at a rate not to exceed the average market yield on outstanding marketable obligations of the United States, with remaining periods of maturity comparable to the reimbursement period of the project during the month preceding the fiscal year on which funds for construction of the project are disbursed.

(3) Such other terms and conditions as may be mutually agreed upon between the Secretary and such port authorities sponsoring such project.

(c) Notwithstanding any other provision of this Act, any navigation improvement project previously authorized by Congress with respect to which a memorandum of agreement consistent with this section has been entered into with the Secretary shall be eligible for inclusion in the Secretary's recommendation under section 501 (c) (1) and will, if included in the Secretary's recommendations, be submitted directly to the Appropriations Committees of Congress.

Locally Financed Construction

Sec.402(a). A port authority or authorities may undertake the construction and operation of a deep-draft navigation improvement project upon entering into a memorandum of agreement with the Secretary.

(b) The memorandum of agreement shall contain provisions requiring the port authority or authorities--

(1) to comply with all applicable laws and regulations of the United States in the construction and operation of the project;

(2) to pay all costs of construction of the project without recourse to federal funds;

(3) to pay all costs of post-construction operations and maintenance of the project in excess of the costs of operations and maintenance of such channel or harbor had such project not been undertaken, as determined by the Secretary; and

(4) to hold the United States, its agents and employees harmless for any loss or damages which may be incurred as a result of the construction or operation of the project.

Sec.403(a). Whenever the Secretary shall determine, on the basis of any information available and after opportunity for a hearing, that any person or port authority is in violation of any provision of a memorandum of agreement entered into under Section 401 or 402, the Secretary shall order such person or port authority to comply with the memorandum of agreement, and such person or port authority shall have 90 days from the date of such order to come into compliance with the memorandum of agreement.

(b) Whenever any person or port authority shall remain in violation of an order of the Secretary in excess of 90 days, the Attorney General, upon the request of the Secretary, may bring a civil action for a permanent or temporary injunction or such other relief as may be necessary to bring such person or port authority in compliance with the memorandum of agreement. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant resides or does business.

TITLE V -- EXPEDITED PROCEDURE FOR AUTHORIZATION AND REVIEW OF

DEEP-DRAFT NAVIGATION IMPROVEMENT PROJECTS

Recommendations to Congress

Sec. 501(a) Beginning 90 days after the date of enactment of this Act, port authorities may submit to the Secretary of the Army (hereinafter referred to as the "Secretary") proposals for the construction of deep-draft navigation improvement projects in accordance with section 401 (hereinafter referred to as the "project proposal"). Each project proposal shall contain--

(1) a detailed description of the project, including any related landside facilities to be constructed by the port authority or authorities sponsoring the project; and

(2) a detailed plan for the financing of the local share of the project cost, including such terms, conditions and assurances as to the repayment of any amounts to be borrowed from the Treasury of the United States as the Secretary, in consultation with the Secretary of the Treasury, may reasonably require as contained in the Memorandum of Agreement entered into pursuant to Section 401 of this Act.

(b)(1) Upon the receipt of a project proposal, the Secretary shall direct the Corps of Engineers (hereinafter referred to as the "Corps") to prepare and submit on an expedited basis--

(A) a report on the feasibility and benefit/cost ratio of the proposed project; and (B) an assessment of the environmental impact of the proposed project.

(2) In order to assist the Corps in the discharge of its duties under paragraph (1), the Secretary shall, within 90 days of the date of enactment of this Act, enter into a memorandum of agreement with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, the Secretary of the Interior, and the heads of such other agencies as may be authorized to enforce and administer the treaties and laws of the United States relating to the preservation and protection of the environment, providing, to the greatest extent practicable, for interagency cooperation and consolidated review of the environmental impact of any deep-draft navigation improvement project which may be proposed under subsection (a).

The memorandum of agreement shall specify the Corps as the lead agency in the consolidated review process, and shall establish a schedule for the completion of such review, including the conduct of such public hearings and the preparation of such reports as may be required by law, within a period not to exceed 240 days from the date of receipt of a project proposal by the Secretary.

(3) In the discharge of its duties under paragraph (1), the Corps may review and resubmit within 180 days any previously prepared feasibility studies, benefit/cost analyses or environmental impact assessments, with such changes or other modifications, if any, as, in the determination of the Corps, may be necessary to reflect the current feasibility, benefit/cost ratio or environmental impact of the project. The Corps may also accept any feasibility studies, benefit/cost analyses or environmental impact assessments prepared and submitted by the port authority or authorities sponsoring the project, and shall have 180 days from the date of acceptance of such studies, analyses, assessments or other reports to review the same and make such changes or other modifications, if any, as, in the determination of the Corps, may be necessary to accurately reflect the feasibility, benefit/cost ratio or environmental impact of the project.

(4) The preparation and submission of the reports and assessments required under paragraph (1) shall not be construed to constitute final agency action, and shall not be subject to review in the courts of the United States.

(c)(1) The Secretary shall evaluate the reports and assessments prepared by the Corps and, not later than January 31 of each year, shall submit to the appropriate Committee of each House of the Congress his recommendations for the construction of deep-draft navigation improvement projects, together with a list of all project proposals which have been submitted to the Secretary under subsection (a).

(2) The recommendations shall, to the greatest extent practicable be cost effective, and consistent with the needs of international trade and commerce, reflect a mix of projects of differing depths and scope and from each of the standard

coastal and Great Lakes ranges.

(3) The Secretary shall not recommend to the Congress any project, or any combination of projects, for which the federal share of projected annual outlays, when combined with the federal share of projected annual outlays for all projects previously authorized or reauthorized under section 502, will exceed the amounts estimated to be available in the Navigation Improvement Account of the Deep-Draft Navigation Trust Fund in each fiscal year during which funds would be disbursed for such projects from such Navigation Improvement Account.

Authorizing Resolution

Sec. 502(a) Not later than 90 calendar days after the Secretary submits his recommendations for the construction of deep-draft navigation improvements projects, the committee to which the recommendations were submitted shall report a joint resolution approving or disapproving such recommendations in whole or in part.

(b)(1) If at the end of 90 calendar days after the committees to which the recommendations have been submitted have not reported a joint resolution approving or disapproving such recommendations in whole or in part, it shall be in order to move to discharge the committee from further consideration of such recommendations.

(2) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same program), and debate thereon shall be limited to not more than one hour, to be divided equally between those opposing and those favoring the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(c)(1) When the committee has reported, or has been discharged from further consideration of such resolution, it shall be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to consideration of the resolution. The motion to proceed shall be highly privileged. An amendment to the motion to proceed shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(2) Debate on the motion to proceed shall be limited to not more than two hours, which shall be equally divided between those opposing and those favoring the resolution.

(d)(1) Consideration of the resolution, and any amendment, debatable motion, points of order, appeals, quorum calls, and recorded votes shall be limited to 10 hours equally divided between those favoring and those opposed to the resolution.

(2) Debate on any amendment shall be limited to one hour, equally divided between those favoring, and those opposed to the amendment. No second degree amendment shall be in order.

(3) Any joint resolution or amendment thereto including projects other than those recommended by the Secretary shall not, if adopted, cause the federal share of projected annual outlays for each fiscal year during which federal outlays are projected to be made for any project included in the joint resolution or amendment, together with the projected annual outlays for all projects previously authorized or reauthorized for such fiscal years to exceed the amount estimated to be available in the Navigation Improvement Account of the Deep Draft Navigation Trust Fund for each such fiscal year.

(4) When debate has concluded, the vote shall occur on the resolution without intervening business, points of order, motions or appeals. It shall not be in order to move to reconsider the vote by which the resolution was agreed to or disagreed to.

Permit Schedule

Sec. 503(a) Not later than seventy-five days after the date of authorization or reauthorization of any deep-draft navigation improvement project, the Secretary, in consultation with affected agencies, shall establish and publish in the Federal Register a schedule for the issuance or nonissuance of all federal permits required to be issued prior to the initiation of construction of such project or related landside facilities (hereinafter referred to as the "permit schedule"). Each permit schedule shall establish deadlines for the issuance or nonissuance of all required permits within a period not to exceed twelve months from the date of publication of such schedule, and shall clearly identify the deadline applicable to the issuance or nonissuance of each permit governed by the schedule. Each schedule shall also provide for the joint processing and/or review of permits governed by the schedule wherever practicable.

(b) A permit schedule established under subsection (a) shall apply to the issuance or nonissuance of all permits governed by such schedule in lieu of any schedule for such issuance or nonissuance which otherwise would apply, and shall be binding on the agencies affected by such schedule, except to the extent such schedule may be extended or otherwise modified under subsection (f) of this section or subsection (i)(3) of section 504.

(c) Any agency subject to the permit schedule may modify any schedule otherwise applicable to the issuance or nonissuance of any permits governed by the permit schedule, including, but not limited to, any schedule for the issuance or nonissuance of such permits established by law other than this Act, where such agency determines that such modification will facilitate compliance by the agency with the permit schedule. No such agency may, however, modify the permit schedule.

(d) The permit schedule, and any schedule otherwise applicable to the issuance or nonissuance of required permits modified under subsection (c) shall be reasonably designed to ensure adequate consideration of all matters relating to the processing or issuance or nonissuance of such permits.

(e) All agencies subject to the permit schedule shall, to the greatest extent practicable, consolidate its proceedings respecting the processing of permits governed by the schedule with the proceedings of other agencies respecting such processing.

(f) Upon the petition of any agency subject to the permit schedule, the Secretary may modify the deadline applicable to the issuance or nonissuance of any permit by such agency, but in no event to extend beyond the twelve-month period established under subsection (a). No extension of any deadline applicable to the issuance or nonissuance of any required permit by any agency may be granted under this subsection unless, in the opinion of the Secretary--

(1) such agency has exercised all due diligence in attempting to comply with the permit schedule and is nonetheless unable to

comply with such schedule; or

(2) it would be impracticable for such agency to meet such deadline due to lack of sufficient funds or personnel or other matters beyond the control of the agency.

Decisions by Secretary

Sec. 504(a)(1) The Secretary shall monitor compliance with the permit schedule by all agencies subject to such schedule, and may require such agencies to submit such information or reports as the Secretary deems necessary for such purpose. If the Secretary determines, based upon such information as may be available to him, that the permit schedule is threatened with delay, the Secretary shall determine the reason for such delay, and notify the appropriate agency of his determination. Following such notification, the Secretary may take such action as he deems reasonable and necessary to avoid any delay.

(2) Whenever the Secretary shall determine, on the basis of any information available to him, that an agency subject to the permit schedule has failed, or is reasonably likely to fail, to meet any deadline imposed under the schedule, the Secretary shall provide notice of such determination to such agency and other interested persons or parties requesting notification of such determination. The Secretary shall then proceed, on an informal basis, to determine the cause of such failure and any action which may be taken by the agency to conform to the permit schedule.

(3) Within 60 days of any determination under paragraph (2), the Secretary shall, in furtherance of the purposes of this Act--

(A) modify the permit schedule so as to allow the agency additional time in which to meet the deadline imposed under the schedule; or

(B) assume the function of such agency with respect to the matter governed by the permit schedule.

In no event may any modifications of the permit schedule under subparagraph (A) provide for an extension of time beyond the twelve-month period established under subsection (a) of section 503.

(4) Any determination by the Secretary under paragraph (2), and

any action by the Secretary under paragraph (3), shall not be construed to constitute final agency action, and shall not be subject to review in the courts of the United States.

(b)(1) Whenever the Secretary shall determine that an agency subject to the permit schedule cannot, in the exercise of due diligence, meet a deadline imposed under the schedule, and that a modification of the schedule so as to allow such agency additional time to meet such deadline would lead only to further delay in the issuance or nonissuance of the permit to which the deadline applies, the Secretary shall issue an order requiring the agency to transmit all records or other documents pertinent to the issuance or nonissuance of such permit to the Secretary for action in lieu of action by such agency. Notice of such order shall be published in the Federal Register and provided to such agency and such other interested persons or parties requesting notification of such order.

(2) Upon receipt of notice of an order under paragraph (1), the agency subject to such order shall transmit all records or other documents pertinent to the issuance or nonissuance of such permit to the Secretary for his action. Upon the receipt of such records or other documents, and within the twelve-month period established under subsection (a) of section 503, the Secretary shall take such additional action as is necessary to make, and shall make, a final decision with respect to the issuance or nonissuance of the subject permit.

(3) Nothing in this section or in section 503 shall be construed to relieve any agency of any requirement established by law, or to affect the application of any law or regulation to a deep-draft navigation improvement project or related landside facilities. Nothing in this section or in section 503 shall be construed to affect the substantive basis upon which any agency decision is made with respect to a deep-draft navigation improvement project or related landside facilities, or to affect or influence the outcome of any such agency decision.

Judicial Review

Sec. 505(a)(1) Any action or other proceeding for review of any final agency action, any action or other proceeding for review of any statement, assessment, analysis, report or other document required to be filed prior to the initiation of construction of a deep-draft navigation improvement project or related facilities, may only be brought in the district court of the United States for the district in which such project or related facilities are to be constructed or located, and any such action or other proceeding shall be filed in such court no later than 90 days after the date of publication of notice of such final agency action or notice of the filing of such statement, assessment, analysis, report or other document.

(2) The court shall, to the greatest extent practicable, consolidate all actions and proceedings relating to a single deep-draft navigation improvement project or related landside facilities, and shall expedite its consideration of such actions or proceedings to the greatest extent practicable within the bounds of its discretion and applicable law.

(3) No court shall have jurisdiction to grant injunctive or other equitable relief with respect to any action or proceeding filed in accordance with this subsection, except when the court finds an emergency to exist or in conjunction with a final judgment or decree. In issuing a final judgment or decree, the court may award the prevailing party its costs and attorneys' fees when, in the determination of the court, such action or proceeding was instituted or maintained without good cause and solely for the purpose of delay.

(b) Any final agency action governed by the project schedule, and any statement, assessment, analysis, report or other document required to be filed prior to the initiation of construction of a deep-draft navigation improvement project or related landside facilities, shall not be subject to review except as provided in subsection (a) of this section; and any final agency action governed by the project schedule, and any statement, assessment, analysis, report or other document required to be filed prior to the initiation of construction of a deep-draft navigation improvement project or related landside facilities, with respect to which review could have been obtained under subsection (a) of this section, shall not be subject to review in any other action or proceeding.

NONSEPARABILITY

Sec. 506. If any provision of this Act, any amendment made by this Act, or the application of such provision or amendment is held to be invalid, the remainder of this Act and the amendments made by this Act shall be considered invalid.

STATEMENT OF HON. CHARLES McC. MATHIAS, U.S. SENATOR FROM THE STATE OF MARYLAND

I appreciate the opportunity to testify before the Senate Environment and Public Works Committee on S. 865, the Deep Draft Navigation Act of 1983.

The Congress and the Administration should give the development of port facilities the highest priority and I commend my colleagues for taking the initiative to try to develop a consensus on legislation which would end the moratorium on dredging.

The development of our ports is not just an economic necessity, although it is certainly that. The development of our ports touches upon the most vital interest of the United States in dealing with the rest of the world. It is an essential ingredient in our ability to supply our allies' energy needs. We must make our ports adequate to receive modern colliers that are capable of carrying vast cargoes of coal in an efficient manner. Increased coal exports would go a long way towards providing stable and secure source of energy to our friends in Europe and to many other countries, while, at the same time, helping our own balance of trade.

My own State of Maryland has within its borders one of the great ports of the world -- the Port of Baltimore. The Port of Baltimore handles a heavy volume of exports, including coal and grain, and one of Bethlehem Steel Company's major steel producing centers, Sparrow's Point, is located there.

The Port of Baltimore channel deepening project was authorized by Congress back in 1970. Had it not been for the long-costly delays in the regulatory and legal process, the project would have started years ago with 100% federal funding. But not until

1980 were the last legal barriers overcome. Since then I have been working with the Administration, the State of Maryland and Congress in attempt to obtain the funds necessary to start the project. The absence of an established port development policy has hampered this effort. The lack of clear cut guidelines for funding port projects has made it virtually impossible for the Administration, the State and the Congress to agree on a cost-sharing arrangement. So here we sit, dead in the water.

A policy must be developed to produce a funding mechanism for port development to move forward with this project and other projects around the country. I would like to comment on three elements of S. 865, the port development legislation being considered by the Committee today.

First, the bill calls for the State to share the construction cost of the project with the federal government. While I would prefer that the federal government pay 100% of the cost, I recognize the realities of the fiscal situation and would support some form of cost-sharing. Every effort, however, should be made to keep the State's share to a minimum of 50%.

Second, the legislation gives full credit to funds already spent by the states and localities in the development and operation of spoil disposal sites. That, I believe, is a critical ingredient of the bill.

Third, the bill provides for an assured source of funding to cover the cost of operation and maintenance. The cost of operating and maintaining out ports are too high to be carried by many of the individual states and localities. Since the economies of our nation depends to a large extent on the health of our ports, it seems reasonable and logical that these cost be the responsibility of the federal government.

All the evidence prior to these important hearings pointed to the fact the S. 865 seems to accommodate most of the affected parties. In particular, it comes closer than any other bill I have seen to fulfilling the needs of the Port of Baltimore. I hope we can make whatever refinements are necessary to make it suitable to everyone, including the Administration, the Port Industry, the States, and the shipping industry. It is critical that we achieve passage of port development legislation this year. I commend the Committee for its work to meet this goal.

STATEMENT OF SENATOR PAUL S. SARBANES
BEFORE THE SUBCOMMITTEE ON WATER RESOURCES
OF THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
HEARINGS ON DEEP DRAFT PORT DEVELOPMENT

June 21, 1983

MR. CHAIRMAN: I appreciate this opportunity to share my views once again with the Subcommittee, as I did two years ago, on the vital question of the deepening of our nation's harbors. While today's hearings are important in that they offer another opportunity to establish a record on this issue, the hearings clearly underscore the fact that we are unfortunately no further along in undertaking new deep water harbor improvement projects than we were two years ago.

Two years ago when I appeared before this Subcommittee, I indicated the great importance of moving forward on the development and improvement of our nation's deep water harbors, including the Port of Baltimore. All the reasons for port and harbor improvement obtain as much today as ever: increased export efficiency particularly with respect to bulk cargos such as coal and grain, energy independence, national security, and our domestic economy as well as our international economic and foreign policy.

The principal Western industrial nations -- our allies -- have long recognized the importance of improved ports. This recognition is based substantially on the fact that the economies of our country and of our allies should secure adequate energy resources as a substitute for oil. Given the tremendous coal resources which the United States has, the capability to export coal through deep-water ports becomes all the more important. It is for these reasons that many of our European allies have repeatedly urged us to undertake a stepped-up port development program.

The State of Maryland and other states and localities have responded positively to the challenge of developing deep-water harbors in order to meet the economic, foreign policy, and national security demands posed. Maryland has proceeded vigorously to deepen the Baltimore Harbor -- a project which received Congressional authorization in 1970. Governor Hughes and the Maryland General Assembly committed extensive resources to develop a major dredge material disposal site. This site has now been completed under budget but at a cost of $53 million -- entirely a state expenditure.

Maryland, through the Maryland Port Administration, has also invested over $200 million in major marine terminal expansion, as well as new cranes, terminal access, and warehouse capability in the Port of Baltimore. Over the last several years, construction of two large coal-loading terminals has been undertaken representing an investment of another $200 million by the private sector. The State and the City of Baltimore have worked together in this effort and have made significant resource commitments.

Unfortunately, while the Baltimore Harbor project has been ready to move forward over the last two years, no funds have been available because of the deadlock over how to fund port improvement projects. I continue to believe, as I indicated to the Subcommittee in 1981, that the responsibility for deepening harbors and channels should rest with the Corps of Engineers -- a responsibility which dates back more than 150 years to 1824, with Congressional enactment of the first rivers and harbors bill so strongly advocated by the distinguished Congressman from Kentucky, Henry Clay. Clay's words are as applicable today as then:

> "There are some improvements emphatically national, which neither the policy, the power, nor the interest of any State would induce it to accomplish, and which could only be effected by the application of the resources of the Nation."

It is regrettable that while the Reagan Administration has sought to abandon this settled policy, the need for dredging and the number of harbors ready to be dredged have increased. The Subcommittee has before it legislation, S. 947, to authorize a number of deep draft improvement projects -- some of which have had positive reports from the Chief of Engineers since 1976 and 1977. The Port of Baltimore has, as you know, been authorized for deepening to a depth of fifty feet since 1970.

Unfortunately, the deadlock as to funding persists. The introduction of S. 865, with its provision of a dedicated fund, up-front funding for authorized projects, and some allocation of federal funds for deep-draft projects is a more forthcoming approach than the Administration's effort to shift totally the responsibility to the states and local jurisdictions.

There is, however, only one major deep-draft dredging project now authorized; and if there are further delays in establishing a satisfactory new framework for dredging, I would strongly urge you to recommend the immediate commencement of the Baltimore project under the existing law.

National Governors' Association

Scott M. Matheson
Governor of Utah
Chairman

Raymond C. Scheppach
Executive Director

June 22, 1983

The Honorable James Abdnor, Chairman
Water Resources Subcommittee
United States Senate
Room SD-449
Washington, D.C. 20510

Dear Mr. Chairman:

On June 21, 1983 the Water Resources Subcommittee held a hearing on national waterways policies. This issue is of vital concern to the nation's governors and since you serve on this subcommittee, I wanted you to be aware of the National Governors' Association's position on deep draft and shallow draft navigation finance policies.

Governor David C. Treen of Louisiana is the association's Lead Governor on Water Transportation and has devoted many hours to committee work on a policy position acceptable to the majority of the nation's Governors.

Governor Treen testified before your subcommittee on June 15, 1983 and submitted the attached statement for the record of the June 21 hearings. The statement includes NGA's policy position on navigation issues, a position forged only after extensive discussions among the governors. It represents a consensus view and I hope you will find it useful in your deliberations.

If there is any way in which the governors can collectively or individually help you or if the NGA staff can provide you with any additional information, please do not hesitate to contact me or Charilyn Cowan, Staff Director for the Committee on Transportation, Commerce and Technology.

Sincerely,

Raymond C. Scheppach

Attachment

HALL OF THE STATES · 444 North Capitol Street · Washington, D.C. 20001 · (202) 624-5300

National Governors' Association

Scott M. Matheson
Governor of Utah
Chairman

Raymond C. Scheppach
Executive Director

Statement of
Governor David C. Treen

before the
Water Resources Subcommittee
Committee on Environment and Public Works
U.S. Senate

June 15, 1983

Mr. Chairman, the nation's Governors are strongly committed to the implementation of a national waterways policy designed to improve the efficiency of our country's transportation network, promote regional and national economic development and expand exports. All of these are vital to generating the sustained growth essential to get our economy back on track.

As a member of the National Governors' Association Committee on Transportation, Commerce and Technology, I serve as Lead Governor for Water Transportation. Working with the Governors of many states, we hammered out a consensus position in favor of a balanced, feasible approach to financing water transportation facilities. On behalf of NGA and my fellow Governors, I submit it for the record and commend it to your careful review. Frankly, it was not easily accomplished. We devoted time at the last three major NGA conferences and considerable staff time to the eight-month effort.

You face similar circumstances in the Congress in attempting to reconcile the many competing geographical and political concerns. We believe the magnitude of the challenge matches the need for strong and decisive action to renew stalled water resources funding legislation and we want to work with you on it.

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POSITION STATEMENT ON

DEEP DRAFT USER CHARGES

Improved deep-draft ports and port facilities are essential components of the nation's efforts to increase foreign trade and, hence, important for stimulating the national economy. Each year, U.S. deep-draft ports handle the shipment of about one billion tons of foreign cargoes and one-half billion tons of domestic cargoes. By providing an effective interchange between deep-draft vessels and inland transport modes, the ports contribute to the economy of the country and the national defense. Primary overseas commodities handled at the ports include exports of coal, grain, and manufactured goods and imports of petroleum, iron and steel, autos, and specialty goods.

The Governors support the concept of cost recovery to assist in funding deep-draft improvements. Existing custom fees now provide revenues from deep-draft ports of approximately $5.5 billion per year. A portion of these fees could be used to offset the costs of operation and maintenance of these vital facilities. However, if Congress determines that additional user charges are necessary, the Governors believe that the following points must be considered:

1. The national port system is comprised of many discrete and distinct ports and waterways.
2. The national port system is a vital component in the overall national defense needs of the United States.
3. Many industries and ports have made substantial investments in port landside facilities.
4. An evaluation of economic factors should be conducted to determine the impacts of user charges on the national port system as well as individual ports and waterways within the system.
5. If new user charges are instituted, the maximum cost recovery level should not exceed 25 percent of the costs of operation and maintenance of the existing system.
6. Recognizing the unique characteristics of certain portions of the system, special exemptions from any further cost recovery should be considered for the following:

   - connecting channels serving multiple ports or port ranges

- island states and territories.

7. Authorized deep-draft projects for which the appropriate non-federal entity has entered into a written contract under section 221 of Public Law 91-611, as of the date of enactment of new legislation, should be exempt from capital cost recovery. In addition, all prior capital expenditures for projects by the U.S. government in deep-draft harbors, locks and other facilities including the outstanding debt of the St. Lawrence Seaway Development Corporation should be forgiven and be exempt from cost recovery.

8. If new federal user charges are collected, these should be deposited in a distinct trust fund and used only for operation and maintenance expenditures on the deep-draft system.

9. Fast-tracking (speeding up the project approval and implementation process) should be an essential part of any legislation related to user charges. U.S. Corps of Engineers and other agency requirements, as well as the congressional authorization and funding of projects, should be addressed. Significant reform in this area should be one of the primary goals of new federal legislation.

10. Any provisions for repayment of new capital project costs should permit a maximum repayment period of fifty years, if local cost-sharing is involved.

POSITION STATEMENT ON SHALLOW-DRAFT USER CHARGES

The effective utilization of the inland waterway system is crucial to the economic health and well-being of this country. The barge and towing industry, which operates on the inland waterway system, consists of some 750 companies operating on 25,543 miles of inland and intracoastal waterways, transporting about 650 million tons of freight annually, with petroleum products accounting for 40 percent of the cargoes and coal making up 20 percent. In addition to energy products, other important commodities transported on inland waterways include construction materials (13 percent), grain (9 percent) and chemicals (6 percent).

The Governors support the concept of partial cost recovery for operations, maintenance and construction on the shallow-draft navigation system. User charges already authorized under the Inland Waterways Revenue Act of 1978 will produce revenues of $67.7 million per year in 1985. If any new user charges should be levied, the user charges should be equitable relative to the benefits derived. It is important to develop a cost recovery system which will have the least disruptive impact on the inland waterway transportation system. For these reasons, the Governors believe the following points must be considered.

1. The shallow-draft navigation system is comprised of many discrete and distinct waterways.

2. The inland waterway system is a vital component in the overall national defense needs of the United States.

3. Many industries and port authorities have made substantial investments in waterway landside facilities.

4. If new user charges are instituted, the maximum cost recovery level should not exceed 25 percent of the costs of operation and maintenance attributable to commercial navigation on the existing inland waterway system.

5. User charge collections for operations and maintenance should flow into the already established Inland Waterways Trust Fund to ensure that these funds are used to improve commercial water transportation. The charges should be applied to the users of those waterways described in Section 206 of the Inland Waterways Revenue Act of 1978 (PL 95-502).

6. If instituted, new shallow-draft user charges should be sufficient to recover 50 percent of the costs of construction, rehabilitation or replacement of existing and new navigation projects and structures on the existing system. The charge should be collected from the users of the constructed facilities over the useful life of the facility.

7. Capital expenditures for projects on which work was initiated as of October 1, 1981, should be exempt from cost recovery.

8. Fast-tracking (speeding up the project approval and implementation process) should be an essential part of any legislation related to user charges. U.S. Army Corps of Engineers and other agency requirements, as well as the Congressional authorization and funding of projects, should be addressed. Significant reform in this area should be one of the primary goals of new federal legislation.

F.-5

WATER TRANSPORTATION

Waterways and coastal ports have served as major transportation facilities since the first settlement of this country. Most of our large cities are located on navigable waterways or are adjacent to coastal public ports. Commuter boat services are offered in several major metropolitan areas. Coal and other minerals, agricultural products, and petrochemicals are among the many bulk materials transported on the waterways. Technological advances in vessels and material handling equipment permit direct international shipments between remote inland ports and the ports of the world. The energy efficiency of this mode of transportation dictates a need to include the inland waterways and the intracoastal canal system in the national transportation policy.

A. Planning

1. The National Governors' Association urges the U.S. Department of Transportation in cooperation with the states to create a marine transportation system and to promote an awareness of the value of waterways for commercial and recreational use.

2. The Governors are cognizant of the scarcity of undeveloped waterfront properties, and will ensure through land use planning the availability of these properties for future development consistent with water transportation.

3. Design of new port facilities and reconstruction of existing installations must utilize intermodal transfer capabilities to the greatest extent possible. Containerized ports, in particular, facilitate intermodal transfer of goods while increasing both labor productivity and the turnaround time of ships in ports.

4. Although the construction and management of multi-use water resources projects may be the responsibility of other agencies, their transportation use should be a part of the U.S. Department of Transportation's overall national plan.

5. The Association strongly recommends that any decisions related to developing and maintaining waterway facilities take into account not only environmental considerations but also economic and transportation impacts.

B. Finance

1. The National Governors' Association urges comprehensive system studies to identify capacity improvements and financing needs for waterways identified as being congested by the National Waterways study.

2. The National Governors' Association urges development of new, sound, and equitable means of financing capacity improvements in congested waterways. Since states are denied the power to levy user taxes or charges on federal waterway commerce by the Constitution and statute without the consent of Congress, the National Governors' Association opposes any requirement for state or local government financing of federal waterway improvements.

3. The Governors support the concept of partial cost recovery to assist in funding shallow-draft improvements on the inland waterway system. User charges already authorized under the Inland Waterways Revenue Act of 1978 will produce revenues of $67.7 million per year in 1985. If Congress further addresses this issue, it is important to assure that the cost recovery system has the least disruptive impact on the inland

It is important that consideration be given to the national defense role and the substantial prior investments made on the inland waterway system. For example, user charges should not exceed the 25 percent level of cost recovery for operations and maintenance since higher levels may have serious adverse impacts on some waterways. In addition, these revenues should be placed in the already established Inland Waterways Trust Fund and the legislation establishing this fund should be amended to enable these funds to be used to operate and maintain commercial water transportation. Finally, such legislation should include measures to speed up the approval and implementation of shallow-draft navigation projects.

4. The Governors support the concept of cost recovery to assist in funding deep-draft improvements within the national port system. A portion of existing customs fees could be used to help offset the costs of these facilities. However, if Congress institutes additional user charges, the Governors believe that several points should be considered.

For economic and national defense reasons, great care must be taken to avoid serious disruptive impacts on ports. These issues are particularly important to any consideration of additional user charges and required cost recovery. For example, any new user charges imposed should not require a level of cost recovery in excess of 25 percent for operations and maintenance; higher levels of cost recovery could have serious adverse impacts on some ports. It may also be appropriate to consider special exemptions for certain areas and facilities as well as all prior capital expenditures. New legislation should provide for speeding the approval and implementation of deep-draft projects and specify a reasonable repayment schedule if any capital cost recovery is required. Finally, any new federal user charges should be kept in a trust fund dedicated solely to operating and maintaining the deep-draft system.

5. Because an overwhelming majority of our metropolitan areas are located in close proximity to bodies of water, and in light of serious energy shortages and the soaring price of OPEC oil, water transit as an accessible, energy-efficient mass transportation option should be closely studied and fully supported by every level of government. The National Governors' Association recommends that ferries be recognized as an acceptable segment of urban transportation systems and, thus, receive Urban Mass Transportation Administration funding on a guaranteed and continuing basis.

C. Operation

1. The Association recognizes the nationwide need for commercial navigation and recreational use of the inland waterway system. This system should be kept adequate, including new construction, operation and maintenance of existing facilities, to meet the needs of all users.

D. Safety

1. The Association supports the U.S. Coast Guard's enforcement of the Boat Safety Act of 1971, the establishment of national uniform standards for safety in the manufacture and maintenance of boats, and continued state licensing and regulation of boat operators and operations.

Adopted August 1980; revised February 1982; revised August 1982.

Office of the Governor
La Fortaleza
San Juan, Puerto Rico 00901

July 7, 1983

The Honorable James Abdnor
Chairman, Water Resources
  Subcommittee
United States Senate
Dirksen Building, Room SD410
Washington, D. C. 20510

Dear Senator Abdnor:

This Statement of Position is submitted on behalf of the government and citizens of Puerto Rico. Its purpose is to address legislation now pending before Congress that proposes fundamental alteration of the means by which the United States finances the operation, maintenance and construction of its national system of ports and commercial waterways.

Our government's interest in the proposed legislation is substantial, given that any restructuring of the traditional legal and economic framework for the conduct of U. S. maritime commerce will have an immediate, acute and almost certainly disproportionate impact upon the island of Puerto Rico. This is so because maritime commerce is absolutely essential to the economic and social well-being and future progress of the more than three million American citizens who reside in Puerto Rico, situated at a distance of one thousand miles from the U. S. mainland.

Development and maintenance of a modern and effective seaport system capable of fostering America's maritime trade and commerce as well as serving the requirements of national security has long been recognized as a vital objective for the nation as a whole. In acknowledgment of this key national policy, the federal government has, as a matter of well-established and longstanding precedent, assumed the major role in the development of the nation's seaports, by providing funds for the construction of ocean port and channel facilities, for operating expenses, and for maintenance dredging. Now, however, Congress is considering proposals from various of its members, as well as from the Reagan Administration, which seek dramatically to alter this longstanding policy; first, by requiring states and local governments to assume financial responsibility for a substantial part of the nation's port development and maintenance costs, and secondly, by establishing a system of user fees whereby the parties who give rise to this nation's maritime commerce will "reimburse" the federal government for its share of port development outlays.

While such changes might have a certain appeal if viewed only in light of the short-term fiscal exigencies which the federal government faces, the Government of Puerto Rico urges Congress to understand that these proposals in the long-run will undermine key national port development objectives by

(i) unduly burdening the already strained resources of state and local governments, and

(ii) inhibiting rather than promoting the growth of the maritime commerce that is so vital to America's overall economic well-being.

As previously stated, development of an effective ocean ports system is not of interest merely to certain ocean-bordered states or areas of the country, but rather is a crucial element of the nation's total economy. Ports generate revenue, jobs, trade, and investment, and they produce these key benefits nationwide. Abdication of federal responsibility for fostering this system would disregard the national character of this interest by shifting a major share of the country's port development costs to just a few local juridictions.

This shifting of financial responsibility places upon the local jurisdictions in question an unsustainable burden to provide funding for essential and large scale projects, without taking into account the fact that the necessary funding resources simply do not exist. In our own case, for example, the recent and drastic national economic recession was disproportionately harsh in its local impact. Moreover, while signs indicate that an economic recovery may now be getting underway for the nation as a whole, the Puerto Rican economy historically lags behind the overall United States economy in the timing of such a recovery. As a telling illustration of this phenomenon, the unemployment rate in Puerto Rico currently exceeds 23 per cent. And indeed, that employment problem reflects in part Puerto Rico's loss of more than 25,000 public sector jobs following the Reagan Administration's funding cuts in the Comprehensive Employment and Training Act program, a loss for which it would be very difficult to compensate under any circumstances.

This double burden of severe recession and unprecedentedly high unemployment has contributed to extensive revenue shortfalls for our government. Even under ideal economic conditions, Puerto Rico could shoulder the financial burden of ocean port development only by diverting funds from other equally crucial infrastructure development programs. Obviously, then, under the present and anticipated future local economic conditions, there exists no foreseeable means by which the Puerto Rican government could reasonably be expected to bear the port development costs heretofore borne by the federal government.

Beyond the onerous funding requirements which the pending legislation would place upon local jurisdictions, certain proposals pose additional burdens in the form of user fees by which the federal government would "recapture from the marketplace" any expenditures which it might make for future port development. We urge Congress to recognize how counterproductive such new assessments would be to the very port development interests which the proposed legislation intends to promote, since such new assessments would obviously constitute an additional cost associated with using U. S. ports.

The counterproductive impact of user fees is especially apparent with respect to port activities in Puerto Rico. Unlike most U. S. ports, Puerto Rico's location puts it in direct competition with numerous foreign ports in the Caribbean area. Our government devotes considerable effort to the task of promoting and expanding Puerto Rico's ability to serve as the central warehousing and distribution center for many of the islands and nations in and around the Caribbean, and as an attractive port of call for foreign cruise vessels. Port improvements are a key ingredient in these efforts, but such efforts would largely be undermined if they were accompanied by new user fee assessments that would place Puerto Rico ports at a direct and additional cost disadvantage vis-a-vis competing Caribbean ports.

Furthermore, it should be noted that a principal impetus for the pending port development legislation has been a desire to enhance the deep-draft capabilities of certain of the nation's ports in anticipation of an expanded coal export trade involving enormous supercollier vessels. I do not question the importance of this objective; I would, however, invite Congress's attention to the fact that such legislation--in large measure intended to aid inland coal producing states as well as the overall U. S. foreign trade balance--underscores the national character of benefits yielded by port improvements and maintenance. In light of these circumstances, it seems both patently illogical and inequitable to seek legislation that would fundamentally restrict and impair the nation's existing port development and maintenance system, both by placing disproportionate funding burdens on a few local jurisdictions as well as by imposing new costs on companies conducting maritime commerce via those localities. The result of these changes would be a substantial frustration of the very commercial objectives that the "reforming" legislation was designed to promote.

The immediate impact of these proposals upon Puerto Rico can best be understood by turning to specific development projects planned for the island. One of these is a $64 million Army Corps of Engineers ("ACE") project to deepen all major channels in San Juan Harbor, improvements which are imperative if the port is to remain a strong economic magnet after 1986, a year that is fast approaching.

The ACE plans an extensive dredging of channels to allow the harbor to accommodate larger ships, including cruise ships and military transport vessels if necessary. These improvements will allow larger cruise ships to make San Juan a home port or port of call, and will thus bolster the island's tourism industry. If the San Juan project is implemented, it is estimated that the number of cruise ship passengers who currently visit Puerto Rico annually (650,000) will almost double, to 1.14 million, by 1996.

Further, San Juan presently handles more than 10 million tons of commercial cargo per year, far more than any other Caribbean port. That figure is expected to rise by the decade's end to about 18 million tons. Puerto Rico wants and needs to convert that projection into a reality.

In addition, on the south-central coast of Puerto Rico, a project authorized by the Senate and House Public Works Committees in 1976 provides for the deepening of channels from the Caribbean Sea to Ponce Harbor, along with additional channeling and improvement of the harbor area serving that part of the island. Ponce is the second largest metropolitan area in Puerto Rico and is situated close to major industrial, commercial and agricultural areas on the island. The project, if realized, would therefore stimulate greater economic development throughout all of southwestern Puerto Rico.

However, should the Congress, in enacting new port legislation, substantially eliminate funding previously available from federal sources, and impose port user fees on vessels calling in Puerto Rico, then the inevitable result will be a slowdown or halting of these critical development projects and a concomitant negative impact on the island's economic growth. Indeed, the proposed abandonment of federal responsibility for commercial port and waterway development could conceivably affect Puerto Rico so adversely as to constitute for years a severe impediment to our economic development and to our drive for greater self-sufficiency.

The above observations offer more than sufficient justification for retaining the wise and beneficial port project financing methods that the nation has embraced through the years. Nevertheless, I wish to make one additional specific comment regarding some of the bills presently pending before Congress.

The pending proposals for ending direct federal funding responsibility for port projects contain various provisions for generating the "non-local" revenues required to finance such projects. For example, the proposals set forth in S. 865 would raise the necessary revenues by means of ad valorem fees assessed against the value of cargoes transported in vessels sailing in and out of U. S. harbors, while S. 970 would assess similar fees against the tonnage of cargoes transported in such vessels. Although the various proposals differ as to who would collect these fees and as to the precise manner in which they would be distributed, all of the bills provide that the revenues generated by these fees will be spread across the full range of port development projects being carried out within a given period of time. Entirely apart from the economic fairness considerations already noted, proposals of this type stand in apparent direct conflict with existing federal legislation regarding the collection and utilization of tax revenues generated within Puerto Rico.

The Puerto Rican Federal Relations Act (enacted by Congress on May 17, 1932 and as amended to the present time) defines the nature and extent of the federal government's taxing authority vis-a-vis Puerto Rico. Among its sections, the Act provides that the internal revenue laws of the United States shall not apply to Puerto Rico, and further provides that any duties and taxes collected either within Puerto Rico, or within the United States on merchandise coming from Puerto Rico, shall be paid into the treasury of Puerto Rico. Thus, entirely apart from all of the other previously cited undesirable features of the restructuring proposed by the pending legislation, the failure of such legislation to acknowledge and conform to Puerto Rico's distinctive federal fiscal status would, in and of itself, necessitate a careful reworking of the proposed methods of revenue raising and expenditures.

In closing, I want to commend the sense of purpose with which Congress is approaching the vital issues arising out of the nation's necessary and continuing commitment to a strong and efficient ocean ports system. This commitment is fully appropriate in light of the importance of the nation's port system to its overall economic well-being. In the process, it is imperative that Congress recognize the grave harm that would result if the federal government were to abdicate its responsibility for port development and maintenance funding, in favor of a short-sighted pursuit of certain worthy goals in the realm of fiscal policy. Over the long term (and the not-so-long-term too), such abdication would unquestionably prove detrimental to the development and maintenance of America's ports, to the economies of seaport communities, and eventually to the national economy as a whole. Accordingly, I strongly advocate retention of the just and highly productive port project funding system currently in effect.

Very truly yours,

Carlos Romero Barceló

Carlos Romero-Barceló

TESTIMONY OF CHARLES SWINBURN
ACTING ASSISTANT SECRETARY OF TRANSPORTATION
FOR POLICY AND INTERNATIONAL AFFAIRS
BEFORE THE WATER RESOURCES SUB-COMMITTEE OF THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
JUNE 21, 1983

Mr. Chairman, Members of the Sub-Committee, good morning. I am pleased to be here to talk about the important port development issues that are before you. You are certainly to be commended for calling this hearing to grapple with a problem that is very difficult, but that may be crucial to the full development of our nation's foreign trade potential. I also want to commend Senator Warner and Senator Hatfield and their colleagues for their work and vision in the introduction of S. 865. Their bill represents a very encouraging effort to deal with the difficulties we all have been facing in developing good legislation. I understand that work is continuing to revise further and improve S. 865. Senators Stafford and Moynihan are also to be congratulated for introducing S. 970. Both of these bills have interesting and constructive features.

Your letter of invitation poses several specific questions concerning port improvement, cost recovery and S. 865 and S. 970. I will address these questions, but first I would like to define the overall issues which concern us here.

These issues can be stated very simply. First, we need to make sure that it is possible to improve our national port system. When economically warranted, ports should be deepened so that large cargo vessels can operate out of them. At this moment, we have no deep-draft ports on the East or Gulf Coasts, yet it is important for the efficient development of our foreign trade that we have the ability to create such ports.

Second, we also need to provide a secure and adequate source of financing to maintain our existing port system in good operating order. Ports cannot function efficiently without adequately maintained and improved navigation channels.

Those are the problems. Now let me try to answer your questions, taking the last two first, since they raise issues of general principle. These issues have to do with the need for a Federal policy that places greater financial responsibility on users of ports and inland waterways and whether any change in current practices with regard to user charges is necessary to keep up with needed improvements on the inland waterways and deep-draft ports.

In this connection, there are two principles that are very important to this Administration and which apply with equal force to both our port and inland waterway programs. These are:

--- First, to the maximum extent feasible, decisions on which improvement projects to carry out should be made by the economic forces of the marketplace, not by the political processes of the Federal government.

--- Second, commercial interests should assume their share of the costs of maintaining the existing deep-draft and inland systems and of the burden of any improvements.

There are good reasons for holding to these principles. The urgent need for the Federal government to practice fiscal stringency is one of them. By placing maximum reliance on the forces of the marketplace for making decisions on improvement projects, we reduce the chance that we will carry out unneeded or "gold-plated" improvements. By having users pay for the costs of both maintaining and improving the existing system, we generate a stream of new revenue that eases the pressure on the budget. Very frankly, if we cannot generate some new revenues, we simply are not going to be able to have the kind of port modernization called for by the President in his State of the Union Address. I would like to stress our belief that that would be be a very unfortunate development for our economy.

I would like to add, though, that there are good reasons for holding to these principles even if we did not have the urgent requirement to hold the budget in check. We should always use rigorous investment standards, and the best way to do this is by allowing marketplace forces to have the maximum influence on our decisions. Similarly, both from the point of view of fairness and in the interest of an efficient transportation system, we believe that the users of Federally funded facilities or services should bear the costs of such facilities or services to the maximum extent possible in all transportation modes.

We believe that these principles of marketplace test and cost recovery should be embodied in any port modernization legislation. There are a number of ways of putting them into practice. With regard to improvements, we think the best approach would be one which recovers the cost of the improvement through levies specific to the traffic using that project. This would require local sponsors of a deepening project to give careful consideration to the effect on their future traffic of the resulting cost recovery charge. With higher levels of cost-sharing, S. 865 would meet this test. In addition, S. 865 contains clauses which permit non-Federal authorities to finance and build channel improvements under an agreement with the Secretary of the Army. Obviously, those authorities would have to be very certain that the benefits justified the cost, and a true market test would, thus, be applied. We favor this provision.

With regard to the operations and maintenance of existing channels, we note that representatives of the port industry have identified a number of problems that may arise with charges that are specific to a particular channel. In theory, it makes the best economic sense to vary operating and maintenance charges according to actual costs at particular ports. In practice, however, the current channel system, the investments in shoreside facilities and the associated traffic flows have evolved over a long period of time in an environment free of user charges. It is important that the shift from general revenue financing to user financing of system maintenance be carried out so that any changes to existing competitive relationships among ports and port ranges are minimized. There can be no question that the continued maintenance of the current system should be financed in the least disruptive and least discriminatory manner. Thus, we would not object to recovering such costs by means of a uniform fee as is done in both S. 865 and S. 970.

The three other questions in your invitation are about the specifics of S. 865 and S. 970, both now under consideration by your sub-Committee. In one, you ask about the relative merits of ad valorem and tonnage fees. Both types of taxes may have merit. The Maritime Administration is conducting an analysis of these charges to determine the relative impacts of the two types. When we have this information in hand, we will share it with you and with others in the Senate. It may allow us to give you a better answer on this point. We do not necessarily object to the use of either an ad valorem charge or a tonnage fee.

It is difficult for me to comment on the relative ease of administration of S. 865 and S. 970, since I understand that the sponsors of S. 865 are receiving technical advice from the Treasury and the Justice Departments, and that changes are being worked out.

You asked whether S. 865, S. 970 or some alternative is most likely to let us have early, priority development of one or two 55-foot ports. In order to achieve this kind of development, we must be able to focus our resources on those projects that are truly needed. For this to happen, the cost recovery provisions must provide a marketplace test that is strict enough to deter marginal projects. The stream of new revenue generated by user fees must also be large enough to meet the costs of priority projects. S. 865 provides for Federal financing of the local share of a project, with local reimbursement to the Treasury over a period of up to 50 years. This does provide a marketplace test since local authorities will probably have to charge their traffic in order to reimburse the Treasury. However, with its sliding scale for local share, S. 865 applies its mildest marketplace test to shallow-depth projects and the most severe test to the deepest draft projects. When that feature is combined with the fairly low level of cost recovery in the bill and the limited amount of funds available for the Federal share of improvements, it may simply be that available funds would not be large enough to sustain priority deep-draft projects if many other projects are also being funded. Thus, we believe S. 865 might benefit from some adjustment both with respect to the sliding scale on local share and the overall level of cost recovery.

S. 970 provides that 75 percent of the costs of projects with depths exceeding 45 feet must be raised by local sponsors, half provided during construction and half recovered over a period of no more than 30 years after initial operation. Clearly, a cost recovery level of this magnitude would provide a stronger market test, while reducing the Federal budget impact of the port development program.

Further on the question of early development of our ports, both of the bills before you, S.865 and S.970, contain language designed to coordinate and speed up the approval process for improvement projects. This "fast tracking" is one necessary condition of any port development bill, and would represent a signficant improvement over current practices.

In conclusion, we consider enactment of a port development and cost recovery bill to be essential to our nation's economic health. There are some port projects with genuine economic merit which should go forward in the national interest. As President Reagan said in the

State of the Union Address, "Our trade position can only be improved by making our port system more efficient. Better, more active harbors translate into stable jobs in our coalfields, railroads, trucking industry and ports."

Secretary Dole has asked me to say that she will be very pleased to work with the Committee to develop a sound bill to which we can all agree so that we can get on with the important business of improving our national port system.

Thank you very much. I will be pleased to answer any questions.

AAPA
American Association of Port Authorities

STATEMENT OF MELVIN SHORE
CHAIRMAN-OF-THE-BOARD
THE AMERICAN ASSOCIATION OF PORT AUTHORITIES

TO THE
SUBCOMMITTEE ON WATER RESOURCES
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

SENATOR JAMES ABDNOR
CHAIRMAN

JUNE 21, 1983

Melvin Shore, Chairman of the Board June 21, 1983

Mr. Chairman, members of the Subcommittee, I am Melvin Shore, port director at the Port of Sacramento. Presently, I am honored to serve as Chairman of the American Association of Port Authorities. Our Association was founded in 1912 and today includes in its corporate membership virtually all port authorities within the United States as well as the major port agencies in Canada, Central America, South America and the Caribbean Region. Hundreds of other port-related offices, agencies, enterprises and individuals whose work brings them in close daily contact with the port industry are contributing and associate members of AAPA.

I appreciate the opportunity to appear before this Subcommittee to represent our Association and the U.S. seaport industry. The issues of navigation development are extremely important to U.S. ports and to those persons and entities who rely on our port facilities to provide the best possible interface services for the nation's maritime transportation operations.

The panel assembled here today includes experienced port management professionals well-qualified to provide this Subcommittee with a cross-section of views on the broad issues attendant to the objectives of navigation development. We have all developed keen sensitivities to the implications of various navigation development proposals.

In the last decade, our industry has been facing the growing challenge of dealing with the uncertainty of the Federal Government's role

IN DEVELOPING AND MAINTAINING THE FEDERAL NAVIGATION SYSTEM. THE DISCUSSIONS OF MANY YEARS HAVE BROUGHT US TO A POINT OF REALIZATION THAT THE DEVELOPMENT OF THE NATION'S DEEPDRAFT NAVIGATION SYSTEM WITH ACCEPTABLE LEVELS OF MAINTENANCE IS ABSOLUTELY CRITICAL TO THE NATION'S ECONOMIC INTEREST.

THE IMPORTANCE OF THIS ISSUE HAS HARDLY BEEN REFLECTED IN POSITIVE ACTION. BECAUSE SO MUCH IS AT STAKE, THE ISSUES INVOLVED IN NAVIGATION DEVELOPMENT LEGISLATION HAVE DEFIED QUICK SOLUTIONS. IN RECENT YEARS, CONGRESS HAS CONSIDERED SOME 30 DIFFERENT BILLS. THE EXECUTIVE BRANCH HAS OFFERED A VARIETY OF PROPOSALS AND, INDEED, OUR COMPETITIVE INDUSTRY HAS BEEN DIVIDED ON MANY KEY POINTS OF HOW NAVIGATION DEVELOPMENT AND MAINTENANCE PROGRAMS SHOULD BE FORMULATED. THIS SAME COMPETITIVE SYSTEM HAS SERVED THIS COUNTRY WELL IN FOSTERING THE DEVELOPMENT OF THE PORT SYSTEM WE NOW HAVE.

WE ACKNOWLEDGE THE SUBCOMMITTEE'S DETERMINATION TO HEAR AND RECEIVE ALL VIEWS. I AM CONFIDENT THAT WITH THE TESTIMONY OF THIS PANEL AND OTHER PORT REPRESENTATIVES AND THOSE REPRESENTING OTHER ELEMENTS OF THE MARITIME TRANSPORTATION INDUSTRY AND ITS USERS, YOU WILL ACHIEVE THAT OBJECTIVE.

AS THE SENIOR ELECTED OFFICER OF THE U.S. PORT INDUSTRY'S REPRESENTATIVE GROUP, I OFFER THE SUBCOMMITTEE AN OVERVIEW OF THE BASIC PROPOSITION OF PORT NAVIGATION DEVELOPMENT IN TERMS OF THE NATION'S RELIANCE UPON THE

PORT SYSTEM AND ITS GROWING NEED FOR MODERN AND EFFICIENT DEEPDRAFT PORT CAPABILITIES. AS YOUR HEARINGS PROCEED, I AM CONFIDENT YOU WILL COME TO REALIZE THAT OUR INDUSTRY IS STRONGLY UNITED IN THE VIEW THAT NAVIGATION DEVELOPMENT MUST MOVE FORWARD EXPEDITIOUSLY IF THE READILY-DOCUMENTED NEEDS OF THE UNITED STATES ARE TO BE MET. AND IF CONGRESS ULTIMATELY CONCLUDES THAT COST SHARING AND/OR COST RECOVERY REQUIREMENTS WILL BE INSTITUTED AS NATIONAL POLICY, WE KNOW THAT YOU WILL RECOGNIZE THE NEED FOR SUCH REQUIREMENTS TO BE EQUITABLE IN EVERY RESPECT FOR THE NATION'S PORTS AND THE COMMUNITIES IN WHICH THEY OPERATE, AS WELL AS THE SHIPPERS WHO USE OUR PORTS AND THE CARRIERS WHO SERVE OUR PORTS.

OVERVIEW

IN TERMS OF LANDSIDE CARGO HANDLING CAPABILITIES, THE U.S. PORT SYSTEM TODAY IS THE EQUAL OF ANY OTHER NATION'S. THE CRITICAL PROBLEM IS THAT FEDERAL NAVIGATION CHANNEL AND HARBOR DEVELOPMENT HAS NOT KEPT PACE WITH THE TREMENDOUS LANDSIDE FACILITY DEVELOPMENT CARRIED OUT BY THE NATION'S PUBLIC PORT AUTHORITIES AND PRIVATE ENTITIES. WHILE SHIPS HAVE BEEN GETTING BIGGER AND TRADE VOLUMES EXPANDING, THE FEDERAL GOVERNMENT HAS DONE VERY LITTLE TO FOSTER DEVELOPMENT OF THE FEDERAL DEEPDRAFT NAVIGATION SYSTEM IN THE LAST 20 YEARS. CONGRESS HAS NOT AUTHORIZED A SINGLE DEEPDRAFT NAVIGATION PROJECT OF ANY SIZE OR DIMENSION IN THE LAST SEVEN YEARS AND MORE THAN 30 SUCH PROJECTS NOW AWAIT CONGRESSIONAL APPROVAL. IN FISCAL 83, THE EXTENT OF THE CORPS OF ENGINEERS' DEVELOPMENT AND

MAINTENANCE DREDGING PROJECTS WILL EQUATE TO ONLY 40 PERCENT OF SUCH PROJECTS CARRIED OUT IN 1963.

PORT DEVELOPMENT IN THE UNITED STATES ALSO IS SERIOUSLY IMPACTED BY AN ARRAY OF BURDENSOME PROCEDURAL AND REGULATORY REQUIREMENTS. OPTIMALLY, IT NOW TAKES 20-25 YEARS TO DEVELOP AN AUTHORIZED NAVIGATION PROJECT FROM CONCEPTION TO COMPLETION. PERMITS FOR LANDSIDE CARGO-HANDLING FACILITIES OFTEN REQUIRE SEVERAL YEARS. THE BUREAUCRACY UNDER WHICH U.S. PORT DEVELOPMENT MUST TAKE PLACE IS DISTENDED, ONEROUS AND BY ANY MEASUREMENT, COUNTERPRODUCTIVE. FOR THOSE RESPONSIBLE FOR PORT DEVELOPMENT, FEDERAL PROCEDURES SEEM TO MANDATE DELAYS. EVERY PORT IN THE U.S. HAS BEEN ADVERSELY AFFECTED BY WHAT IS BENIGNLY CALLED THE FEDERAL SYSTEM FOR AUTHORIZATIONS AND PERMITS.

THIS RECORD CLEARLY CONFLICTS WITH THE LEVEL OF ACTIVITIES WHICH GENERATE THE NEED FOR NAVIGATION DEVELOPMENT. THE UNITED STATES IS AS DEPENDENT AS EVER ON THE MOVEMENT OF INTERNATIONAL TRADE. PRESENT INTERNATIONAL TRADE VOLUMES ARE EXPECTED TO NEARLY DOUBLE BY THE END OF THE CENTURY. SOME 95 PERCENT OF U.S. INTERNATIONAL TRADE VOLUME MOVES VIA OCEAN CARRIAGE AND THUS IS DEPENDENT UPON THE PORT AND NAVIGATION SYSTEM. TECHNOLOGIC ADVANCES TOWARD LARGER, MORE AUTOMATED SHIPS HAVE THRUST WHOLESALE CHANGE UPON ALL COMPONENTS OF THE INTERNATIONAL MARITIME SHIPPING INDUSTRY, PARTICULARLY UPON PORT FACILITIES WHERE THE NATIONAL DEMAND FOR MODERN AND EFFICIENT CARGO HANDLING CAPABILITIES IS EVER INCREASING.

Department of Defense spokesmen have confirmed on many occasions in recent years that critical U.S. national defense and mobilization strategies depend upon ocean carrier movements, and thus the U.S. system of ports and deepdraft navigation channels. Twenty-four ports have been designated "National Defense Ports" but DOD spokesmen have made it clear that ultimately they will be relying on all ports to support their efforts. Indeed, the mechanism to take over the ports under these conditions is in place. The nation's defense must be a carefully considered factor in policymaking and planning for the port and navigation systems, both in terms of the capabilities of those systems and in the assurance of sufficient redundancy.

Traditionally, the U.S. port system has been primarily developed on the basis of a partnership between local and state port authorities and the federal government. Landside cargo handling facilities and associated infrastructure including prescribed components of federal navigation projects, are provided by local, state and private interests. Navigational capabilities have been the responsibility of the federal government.

For their part, the local, state and private interests have responded to the dynamics of change in a most dramatic manner. In its 1982 report on the status of U.S. public ports, the U.S. Maritime Administration states that local, state and private entities invested some $5 billion in terminal facilities in the period 1946-1980 and are likely to invest $5 billion more in this decade. All of this money has been and is being invested in a good-faith reliance upon the federal government to fulfill its traditional responsibility in providing appropriate development and adequate maintenance of our nation's deepdraft navigation system. It is essential that any Congressional action to change traditional funding formulae for navigation projects recognize and respect the record of investment in port facilities by non-federal entities.

The navigation system belongs to the federal government. Its development through the years has been premised on the reality that the nation as a whole has a well-defined interest in the flow of international commerce and in maintaining adequate national defense capabilities. Present conditions and identified trends reinforce this premise; the United States is vitally dependent on its sytem of seaports and deepdraft navigation channels.

Total federal investments in the deepdraft navigation channels from 1824 through FY 1979 were approximately $4.4 billion. This compares to the 1946-1980 investments of the port industry which are estimated at $5 billion. Clearly, the federal government's investment in deepdraft navigation channels has supported a far greater level of port development and operations which generate a wide range of positive economic benefits. Some of these benefits are set forth in Attachment A.

In addition to providing essential transportation services to international trade flows and serving national defense strategies, the U.S.

SEAPORT AND NAVIGATION SYSTEMS PRODUCE SIGNIFICANT DIRECT BENEFITS TO THE FEDERAL GOVERNMENT. THE U.S. MARITIME ADMINISTRATION HAS CONCLUDED THAT ACTIVITIES AT U.S. PORTS PROVIDE DIRECT EMPLOYMENT FOR MORE THAN ONE MILLION PERSONS, RANKING THE U.S. PORT SYSTEM A MAJOR NATIONAL INDUSTRY. THE FEDERAL TREASURY REALIZES SOME $6.0 BILLION ANNUALLY IN CUSTOMS RECEIPTS COLLECTED AT U.S. SEAPORTS, OR MORE THAN 10 TIMES THE AMOUNT THE FEDERAL GOVERNMENT PRESENTLY IS SPENDING ON THE DEEPDRAFT NAVIGATION PROJECTS.

A PORT IS THE COMBINATION OF LANDSIDE FACILITIES AND NAVIGATION CAPABILITIES. THUS THE U.S. PORT SYSTEM IS ONLY AS GOOD AS THE FEDERAL DEEPDRAFT NAVIGATION SYSTEM. THE PARAMOUNT IMPORTANCE OF MAINTAINING A NAVIGATION CAPABILITY CONSISTENT WITH THE NATION'S INTERNATIONAL TRADE AND NATIONAL DEFENSE NEEDS HAS NOT BEEN ADEQUATELY REFLECTED IN CONGRESSIONAL ACTION AND EVIDENCE OF THE SHORTCOMINGS IS MOUNTING. THE PORT FACILITIES THE UNITED STATES WILL REQUIRE BY THE TURN OF THE CENTURY ARE NOT YET IN PLACE. IN ITS NATIONAL PORT ASSESSMENT 1980/1990, THE MARITIME ADMINISTRATION ESTIMATES A REQUIREMENT FOR 247 SEAPORT BERTHING FACILITIES, REPRESENTING A BASIC CAPITAL INVESTMENT OF AT LEAST $5 BILLION THROUGH THE END OF THIS DECADE. UNDER THE TRADITIONAL SYSTEM OF PORT DEVELOPMENT, THE INITIATIVE TO ACCOMMODATE THESE WELL-DOCUMENTED NEEDS WILL COME NOT FROM THE FEDERAL GOVERNMENT, BUT FROM LOCAL, STATE AND PRIVATE ENTITIES. THE ABILITY OF THESE NON-FEDERAL INTERESTS TO PLAN AND TO PROVIDE FOR THE NECESSARY PORT DEVELOPMENT IS SERIOUSLY INHIBITED BY THE FEDERAL GOVERNMENT'S LACK OF SUPPORT FOR THE DEEPDRAFT NAVIGATION SYSTEM. THIS IS A

PROBLEM WHICH MUST NOT BE MISUNDERSTOOD OR UNDERESTIMATED IF THE NATION'S NEEDS FOR PORT DEVELOPMENT ARE TO BE ACCOMMODATED.

A PROGRAM OF DEEPDRAFT NAVIGATION DEVELOPMENT

IN THE NATIONAL INTEREST, IT IS IMPERATIVE THAT THE FEDERAL GOVERNMENT COMMIT TO A PROGRAM TO ASSURE THE APPROPRIATE LEVELS OF OPERATION AND MAINTENANCE AND THE ORDERLY DEVELOPMENT OF U.S. DEEPDRAFT NAVIGATION CHANNELS.

LEGISLATION RELATING TO HARBOR AND CHANNEL DEVELOPMENT MUST NOT SIMPLY REDEFINE PROCEDURES AND FORMULAE BY WHICH PROJECTS ARE AUTHORIZED AND FINANCED. SUCH LEGISLATION MUST ALSO COMMIT THE FEDERAL GOVERNMENT TO A DEFINED PROGRAM OF UPDATED MAINTENANCE SCHEDULES AND DEVELOPMENT WORK ON DEEPDRAFT NAVIGATION CHANNELS. AND SUCH LEGISLATION SHOULD SET FORTH A NEW MANDATE OF PROCEDURAL EFFICIENCY TO ENSURE THAT THIS ESSENTIAL WORK IS CARRIED OUT IN THE MOST TIMELY AND ECONOMIC MANNER POSSIBLE.

THE U.S. PORT INDUSTRY CALLS ON CONGRESS TO DECLARE AN EXTENDED PROGRAM OF SUCH PROJECTS WITH THE OBJECTIVE OF MODERNIZING THE DEEPDRAFT NAVIGATION SYSTEM TO AN ACCEPTABLE STATUS BY THE YEAR 2000. CLEARLY, WE ARE FACED WITH THE CHALLENGE OF REVERSING THE EFFECTS OF INACTION DURING THE LAST 20 YEARS, TO CATCH UP SO AS TO EQUIP THE NATION WITH THE DEEPDRAFT NAVIGATION SYSTEM SO ESSENTIAL TO ITS ECONOMIC WELL-BEING AND NATIONAL SECURITY. THIS PROGRAM WILL REQUIRE FEDERAL EXPENDITURES FAR IN

EXCESS OF MONIES SPENT IN RECENT YEARS WHEN THE NEEDS WERE NOT ADDRESSED. THE U.S. PORT INDUSTRY URGES CONGRESS TO RESPOND TO THE GENERAL NEED FOR NAVIGATION DEVELOPMENT WITH APPROPRIATE COMMITMENTS. THE CONGRESS CAN BE ASSURED THAT THE LOCAL AND STATE PORT AGENCIES OF THIS COUNTRY WILL CONTINUE TO PROVIDE THE INITIATIVE, THE EXPERTISE AND, YES, THE CONSIDERABLE CAPITAL INVESTMENT TO ENSURE DEVELOPMENT OF LANDSIDE PORT FACILITIES NECESSARY TO ACCOMMODATE THE DEMANDS OF THIS NATION'S WATERBORNE COMMERCE.

THE PORT INDUSTRY STRONGLY SUPPORTS THE CONCEPT OF LEGISLATION WHICH PROVIDES MEANINGFUL REDRESS TO THE COUNTERPRODUCTIVE DELAYS IN NAVIGATION AND PORT DEVELOPMENT. THE ENTIRE FEDERAL REVIEW PROCESS MUST BE COMPLETELY REFORMED INCLUDING THE PROCEDURES OF EXECUTIVE REVIEW OF PROJECTS AND CONGRESSIONAL AUTHORIZATIONS, FEDERAL PERMITTING PROCEDURES FOR LANDSIDE TERMINAL PROJECTS AND LOCAL ASSURER DREDGING PROJECTS AND JUDICIAL REVIEW. THIS MUST BE VIEWED AS A VERY IMPORTANT OBJECTIVE IN ANY LEGISLATION RELATING TO PORT AND HARBOR DEVELOPMENT.

CUMULATIVE IMPACT OF PROPOSED USER FEES

IN THE LAST TWO YEARS, THE EXECUTIVE BRANCH HAS INDICATED ITS INTENTION TO HAVE ENACTED A NUMBER OF TRANSPORTATION-RELATED COST RECOVERY USER FEES. THESE INCLUDE CHARGES TO RECOVER FEDERAL EXPENDITURES ASSOCIATED WITH THE NATION'S NAVIGATION SYSTEM, SHALLOWDRAFT AND DEEPDRAFT, USER CHARGES TO RECOVER CERTAIN EXPENSES RELATED TO COAST GUARD SERVICES TO

COMMERCIAL VESSELS AND CARGO HANDLING FACILITIES, AND USER FEES TO RECOVER A PORTION OF COSTS FOR CUSTOMS' SERVICES. THESE INITIATIVES REFLECT THE PREMISE THAT COSTS OF PROVIDING FEDERAL SERVICES SHOULD BE BORNE BY THE USERS OF SUCH SERVICES.

THE U.S. PORT INDUSTRY IS DEEPLY CONCERNED OVER THE CUMULATIVE IMPACTS THAT SUCH FEES, IF ENACTED, MIGHT HAVE ON U.S. INTERNATIONAL TRADE, PARTICULARLY PRICE SENSITIVE EXPORTS.

WE URGE CONGRESS TO CONSIDER THAT EACH USER FEE IMPOSED HAS IMPLICATIONS THAT EXTEND FAR BEYOND THE FEDERAL GOVERNMENT'S IMMEDIATE ECONOMIC OBJECTIVES. THE ECONOMIES INVOLVED IN THE FLOW OF THE NATION'S COMMERCE HAVE BEEN ESTABLISHED ON THE BASIS OF A CONSTANT FEDERAL ROLE IN PROVIDING CERTAIN TRANSPORTATION SERVICES. THE IMPOSITION OF USER FEES WILL ALTER THESE ECONOMIES TO SOME EXTENT WITH THE CORRESPONDING IMPACTS ON PRESENT PATTERNS OF TRADE AND THE COMPETITIVENESS OF MANY U.S. EXPORTS AND THE PRICE OF IMPORTS. THE IMPACTS OF ANY SPECIFIC USER FEE AND THE CUMULATIVE IMPACTS OF ALL PROPOSED USER FEES MUST BE IDENTIFIED AND MEASURED BEFORE IMPOSITION. TO DO LESS WOULD ENHANCE THE RISKS OF ACHIEVING IMMEDIATE COST RECOVERY GOALS AT THE EXPENSE OF EXACERBATING U.S. TRADE DEFICITS, COMPOUNDING THE ECONOMIC PLIGHT OF AMERICAN FARMERS AND UNDERMINING PORT FACILITY INVESTMENTS UNDERWRITTEN BY CONSTITUENTS OF LOCAL AND STATE PORT AUTHORITIES.

CONCLUSION

AS THE REPRESENTATIVE BODY OF THE U.S. SEAPORT INDUSTRY, OUR ASSOCIATION WILL CONTINUE TO MONITOR LEGISLATIVE INITIATIVES RELATED TO PORT AND NAVIGATION DEVELOPMENT. WE REALIZE THAT CHANGE MAY BE IN PROSPECT. WHETHER THESE CHANGES ARE POSITIVE OR NEGATIVE TO THE NATIONAL INTEREST IS THE ESSENTIAL QUESTION IN THESE LEGISLATIVE INITIATIVES. WE APPRECIATE THE DETERMINATION OF THIS SUBCOMMITTEE TO CONSIDER ALL THE ISSUES INVOLVED IN STRUCTURING A MEANINGFUL NAVIGATION DEVELOPMENT PROGRAM.

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Testimony of

The National Coalition for Port Progress

Walter A. Abernathy
Executive Director
Port of Oakland

Before the Subcommittee on Water Resources
Senate Committee on Environment and Public Works
on the subject of

Port Development Legislation

June 21, 1983

Mr. Chairman, I am Walter Abernathy, Executive Director of the Port of Oakland, California. I am representing the National Coalition for Port Progress, which was formed in July, 1981 in an effort to present to Congress a unified view by major American ports on the difficult issues involved in port development legislation.

The Coalition includes: the Ports of Long Beach, Los Angeles, Oakland, San Francisco, New Orleans, Seattle, Tacoma, Stockton, the Port Authority of New York and New Jersey, the New York City Department of Ports and Terminals, the ports of Brownsville, Corpus Christi, Galveston and Houston. Together, these ports represent roughly 67% of customs revenues collected annually.

I am pleased to be here today and to commend this subcommittee, and particularly its Chairman, for the attention being given the subject of port development and commercial navigation.

There is a good reason for that attention. The sea ports in this country are a vital link in our system of domestic and international commerce. They are the source of billions of dollars in federal, state and local revenues every year. The condition of their facilities and the degree to which their channels are maintained bear a direct relationship to the trade that occurs in our harbors. In short, the economic well-being of our nation's ports.

Nearly five years ago, the Maritime Administration issued a report which outlined the extent to which the port industry had an impact on the American economy. Among the many impressive numbers in that report, it was indicated that our ports were responsible for over 1 million jobs, over $5 billion in federal taxes, $2 billion in state and local taxes, as well as a $15 billion contribution to the gross national product.

Today 100% of America's coal exports, 91% of paper and allied product exports, 77% of chemical, iron and steel exports, 76% of construction and manufacturing machinery exports and 70% of agricultural exports are loaded aboard ships which navigate the deepdraft channels so critical to our balance of trade.

Duties levied in our seaports have yielded approximately $35.2 billion over the past eight years, including an estimated $6.5 billion in 1982. Overall customs revenues are projected by the federal government to steadily increase from $9.3 billion in 1982 to $15.39 billion in FY 1987. These numbers are important for reasons discussed later in this statement.

An efficient port system is essential to increasing United States exports and reversing our balance of trade deficit. In 1982, the U.S. suffered a $31.8 billion deficit in the trade of goods.

This is illustrated by the conclusions of the American Association of Port Authorities, based on a survey of 19 U.S. ports, that navigation and channel constraints resulted in the loss or detention of 25 million tons of cargo at a cost of $3.4 billion.

If the U. S. is to continue to receive these benefits, we must insure that our port system remains adequate to facilitate and promote, rather than hinder the import and export trade from which the benefits arise. The regulatory climate which now exists in this country is one which substantially impedes efforts to maintain and develop an adequate port system.

This is true for two primary reasons:

1. The existing system for authorization, funding and permitting of new navigation projects is antiquated and inefficient. Procedural impediments imposed by this system cause intolerable difficulties and delays for new channel improvement projects.

2. Current uncertainty regarding continued responsibility for funding channel maintenance and improvement compounds the difficulties created by the outmoded procedural system and, in recent years, has made it virtually impossible to proceed with new channel improvement projects. This funding uncertainty also creates substantial difficulty in decisions to proceed with necessary shoreside improvement projects.

To respond to these two major problem areas, our coalition supports:

- Revision of the procedures by which construction projects are investigated, designed, authorized, funded and constructed and streamlining of the federal permitting process, and

- Recognition of the relationship between the government's receipt of the custom revenue and other benefits of port operation and the government's obligation to play an active role in maintaining and improving the navigation facilities from which such benefits arise.

We see legislation as an important mechanism for addressing these issues and recommend the following outline for the Committee's consideration:

° Procedural reforms to significantly reduce the time it takes to initiate and complete a project.

° Reforms to streamline and shorten the permitting process.

° 100% federal funding for all operation and maintenance work except as noted below.

° 100% federal funding for all improvement projects, down to a depth of 45 feet.

° 50% federal and 50% local funding for improvement projects deeper than 45 feet, as well as for the incremental cost of operating and maintaining those deepened channels.

° Congressional authorization to allow local port entities to charge local user fees on shipping to cover that local share.

° The devotion of a portion of the annual customs receipts for the use of the Corps of Engineers, as appropriated by Congress, to cover the federal share of construction and O&M.

Procedural Reforms

As countless pages of testimony before this and other committees of Congress have related, the existing mechanism for improving commercial navigation channels is as fraught with steps, devices and circuitous passages as is found in a Rube Goldberg creation. The analogy has its limitations: Rube Goldberg devices, weird as they may seem, achieve their purposes; we cannot say the same for our nation's navigation projects which stall and lose ground, making project completion sometimes seem like a speculative matter.

Studies to determine project feasibility often take 10 or more years. Can that time be significantly reduced? Without a doubt. Consider that in Japan, projects are fully completed in only 5 years, half the time the Corps of Engineers have had our projects under study.

The time involved to complete projects in the U.S. has averaged over twenty years. This is verified by the Corps' own report. That estimate was calculated prior to the current dry spell of project authorization. Even before the dry spell which began during the previous administration, getting project authorization from Congress involved as much as a one or two year wait to allow the legislative process to take its course.

The annual appropriations for projects also has a slowing effect. Work on the stages of a project is largely scheduled according to the amount of money budgeted and funded. Work literally halts in mid year because a project exhausts its allotted dollars for that fiscal year. The accumulated delays can be significant even if a month or two is lost annually over a project's lifetime.

Thus, there are a variety of explanations for the unacceptable period of time that it takes to accomplish a project. Solutions vary as well, but one necessity is that the environmental permitting procedures must be streamlined. Our recommendation is that the Corps of Engineers be given the lead role, with the other pertinent agencies providing comments and recommendations. Secondly, deadlines for the other agencies' comments and Corps of Engineers' decisions should be required and enforced. Required reviews by the other agencies should be done concurrently with the Corps. Maximum time limits could be set in statute, giving flexibility to the Secretary of the Army to secure shorter deadlines if necessary.

Reforming the permitting process, however, may not be enough to deliver navigation improvement projects. Where the local interest would be paying 50% of the cost, it is not unreasonable for the federal government to be in a reviewing and approval role with respect to construction projects, and not responsible for doing the projects themselves. A good deal of time and money could be saved without sacrificing the quality of the project. A partnership which would permit the project sponsor to proceed with the improvement while the federal government monitors and ensures the quality of the work could be very efficient.

The project sponsor would have to meet permitting, economic, engineering and construction standards set up and enforced by the Corps of Engineers to ensure that the funds of the government are well spent.

Funding Responsibility

Throughout most of this nation's history, the federal government has assumed responsibility for dredging to maintain and improve the navigation channels essential to the waterborne foreign and domestic trade of the United States. Now some are asking why this responsibility should be continued. I gave you a big part of the answer at the beginning of my testimony. Ports generate annually about $11 billion in revenues--over $5 billion in tax revenues and over $6 billion in customs revenue--and those numbers are increasing.

The essential function of ports, in generating these revenues, has been a major historical justification for government's continuing role in maintenance and improvement of the port system. What is now being advocated by some is that the government be excused from responsibility for port maintenance and improvement while at the same time retaining the full customs revenue and other benefits which arise from port activities.

Besides being inequitable, this policy is short sighted. With customs revenues already substantially taxing the trade benefits generated by port operation, it is questionable at best whether we can impose additional levys on port operation to fund needed maintenance and improvement without jeopardizing our ability to compete for trade in the world market and without ultimately reducing customs revenues.

For the government, ports are productive assets. If we are to continue to make a profit from them we must maintain them and improve them to meet competition. Short term savings in maintenance and improvement costs will result in long term revenue reductions.

We must also consider the fact that local government agencies and private enterprise, in reliance on the federal government's commitment to maintain and improve the channels, have shouldered the cost of developing and maintaining the landside facilities at 189 commercial ports served by the federally financed channel system. Indeed, in the nearly two centuries over which this equitable partnership has endured, a vital infrastructure of locally and privately financed port facilities has been erected nationwide at a replacement value of more than $54 billion.

We feel strongly that the federal government should remain responsible for the maintenance of the channels as well as for 100% of the improvement costs down to 45 feet and 50% of the improvements beyond that depth.

Historically, economically, and in terms of the overall transportation system of this country, it makes little sense for the federal government to abandon its long time obligation to maintain and improve our ports and harbors An exception one can make is in the area of channel improvements to depths greater than 45 feet. Those ports contemplating such deepening projects feel that a 50% local share is manageable and justified, given the more specialized nature of those channels.

For all of the reasons set out above, we recommend a firm federal commitment to the funding of channel maintenance and improvement projects. Because of the port system's major role in customs revenue generation, the proper form for the federal commitment is the dedication of a portion of the annual customs revenues collected at the port.

To show the legitimacy of such an idea, one need only point to precedent, the 47 year old diversion of 30% of customs revenues to benefit agriculture. Since 1935, more than $22 billion in customs fees has been designated for Department of Agriculture program use.

User Fee Authority for Cost Sharing

To the extent that ports would have to raise revenues to cover the local 50% share, they will need the authority from Congress to levy user charges on shipping in their harbors. That authority is needed only to raise sufficient funds to cover the local share. Revenues would remain in the port or origin and fees would be determined by a process which would include public hearings. Maximum flexibility should be given the ports to enable them to develop fees that suit the project involved and the situation found in the ports.

Finally, Mr. Chairman, we would like to firmly state our belief that Congress should act on port development legislation this year so that the improvement of our commercial channels can resume and funding of maintenance and construction work is no longer in doubt. Over the past seven years there have been no new projects authorized, increasingly drawn out federal procedures to be met, threats of federal abandonment of future channel work and threatened reductions in the budget for the Corps' O&M work.

We recognize that others have different ideas on providing a system for funding deep draft navigation. Of the many proposals we have seen only the Moynihan Bill and the proposal circulated within the government by the Army are concepts that approach, at least in part, our position.

We can not support any system that raises funds by the application of an ad valorem tax.

We are heartened by the Chairman's introduction of water resource authorization legislation, S. 947, this year. It is our hope that this committee will move expeditiously on that bill and deep draft navigation legislation to resolve these issues that have stympied the continued development of our great seaport system. Thank you.

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STATEMENT

TO THE

U. S. SENATE WATER RESOURCES SUBCOMMITTEE

BY

W. DON WELCH

JUNE 21, 1983

Mr. Chairman:

My name is W. Don Welch. I am in my twelfth year as executive director of the South Carolina State Ports Authority, and I am privileged to serve as chairman of the steering committee of the U. S. Port System Advocates, a coalition of 55 small and medium-sized ports. Before entering the port industry, I worked in the private sector for a number of years, first with the Humble Oil Company and, then, as corporate general manager of traffic for Champion Paper Company.

On behalf of the many ports I represent, let me state that I sincerely appreciate this opportunity to appear before you to discuss the critical issue of funding our nation's much-needed navigation improvements.

When the federal government's intent to recover the costs of dredging deep-water channels was first made known, our port group expressed a philosophical disagreement. It was our opinion that a

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modern, efficient system of seaports was indispensable to the economic and military security of our country. We also argued that annual U. S. Customs receipts at ports far outweighed the yearly dredging costs incurred by the U. S. Army Corps of Engineers.

It was, and still is, our belief that the partnership between national and local authorities, which has developed one of the finest port systems in the world, should be continued. That is to say, localities should provide shoreside facilities necessary to transfer cargo to and from vessels, and the federal government should perform the dredging necessary to keep our shipping channels clear for vessels of the world fleet.

We will forever contend that our navigation channels do not exist to benefit only port communities or users, but to benefit our entire nation. For that reason, we would prefer that no user fee system be established. That has been, and remains, our first position in the cost recovery debate.

Unfortunately, some sort of cost recovery system seems to have become a foregone conclusion during the last two years. U. S. Port System Advocates has not adhered to a position of unreasonable opposition. Our group, realizing the pressing need for some new plan to fund harbor improvements, has, instead, advanced and supported a uniform system of cost recovery, one that would not disadvantage any port from a competitive standpoint. Our position, as you know, has been at odds with that of another segment of the port industry. We regret such a situation and have tried unsuccessfully to bridge a gap founded in strong economic differences.

Today, the matter at hand is the Deep-Draft Navigation Act of 1983 (S. 865). Mr. Chairman, U. S. Port System Advocates endorses this bill. In our studied opinion, it represents an equitable, workable solution to the cost recovery issue. It is a compromise, in the best sense of the word. We applaud those not members of our coalition, especially representatives of Virginia and Louisiana, who have developed and are supportive of this legislation.

The bill's value-related tax for operation and maintenance dredging not only meets our uniform fee test, but it assesses the various classes of cargo on an ability to pay basis and would cause the least amount of market disruption for major U. S. exports.

The local cost-sharing concept for new work should not prevent many ports from achieving justifiable ambitions insofar as channel configurations are concerned. At the same time, we contend the local share should be kept as low as possible, as seaports are struggling to finance expensive shoreside improvements all along. Finding new sources of financing continues to be a great challenge to our industry.

We also believe the excess credit account addresses the big ports' primary objection to uniform fees in that those ports are granted a limited benefit in return for collecting fees in excess of what would be required for their own needs.

Finally, S. 865 fully integrates the St. Lawrence Seaway and Great Lakes ports into the national port system. This is another requirement of U. S. Port System Advocates.

While we believe certain sections of S. 865 need refinement for purposes of clarification, we support this legislation as the best attempt yet to deal with the matter at hand. We recommend it to you and hope it receives your favorable consideration.

W Don Welch

W. DON WELCH

U. S. SENATE
THE SUBCOMMITTEE ON WATER RESOURCES
TUESDAY, JUNE 21, 1983

ISSUE

NEED FOR NEW NAVIGATION IMPROVEMENT PROJECTS AND COST RECOVERY PROPOSALS FOR PORT MAINTENANCE AND IMPROVEMENTS

BY
JAMES R. KELLY, PRESIDENT
DELAWARE RIVER PORT AUTHORITY

My name is James R. Kelly. I am President of the Delaware River Port Authority, Camden, New Jersey. The Delaware River Port Authority is a bi-state agency, operating four bridges and a high-speed mass transit rail system between Southern New Jersey and Center City Philadelphia. In addition, the Port Authority is charged with responsibility for promoting international waterborne commerce on the Delaware River. I am here today representing the Ports of the Delaware River, which include Philadelphia, Camden and Wilmington, Delaware.

During 1982, the Ports of the Delaware River handled 58 million tons of export and import waterborne commerce, and generated in excess of $230 million Customs revenue. Thus, the Port ranks among the largest of U. S. ports.

The position of the Ports of the Delaware River on the issue of User Fee legislation is:

1. The Ports of the Delaware River endorse the current funding of all O&M and new projects by the Federal government.
2. If Congress must enact user fee legislation, fees should not be collected for O&M of existing channels. A uniform fee for new construction may be appropriate.

Our position differs from most other ports in that, if user fee legislation is necessary, O&M of existing channels and new construction should be treated as two completely separate issues. All of the legislation that has been proposed links the issues in these revenue-generating schemes. We urge this committee to take the first step in separating the issues and treating each one separately.

O&M of the existing U. S. port system is critical to the orderly functioning and competitive position of U. S. trade activities. The linking of the issues has disrupted the port terminal development activities and cargo logistics handling. Federal funding of O&M is about $300 million annual, a very small impact on the total budget. Again, I urge you, don't use O&M funding as the vehicle for new contruction funds.

It is the position of the Ports of the Delaware River that maintenance of the existing channels is for the benefit of the nation, not for local users. Take the Delaware River for an example:

- Located on the Delaware River are seven refineries that supply fuel oil and other refined products to consumers throughout the Northeast and Midwest.
- The grain that moves through the terminals on the river originates as far away as Kansas.
- The deep and protected waters of the Delaware River provide a safe location for the Navy Yard. The Naval installation serves a national need. Our chemical industry requires the deepwater navigation of our channel, but the product produced serves farming needs of the grain fields of the Midwest and the fruit growing areas of Florida and California.

The channels are a national resource and should be maintained by Federal funding. Specifically, our position on user fees is:

1. 100% O&M to be paid by U. S. Government, funds to be placed in O&M trust fund either by appropriation from Treasury (as currently) or by Customs diversion.
2. New construction under 45 feet to be financed by a combination of Federal, local and uniform fees. Incremental O&M for construction under 45 feet would be treated the same as existing O&M, 100% Federal.
3. New construction over 45 feet to be financed by a combination of Federal and local funds. Incremental O&M over 45 feet would be treated the same as new construction over 45 feet.

ADDENDUM

In your letter of June 7, 1983,you asked for comments on priority development of one or two 55-foot ports at an early time. We have at the present a natural 55 foot draft anchorage in the Delaware Bay that will shortly be available for topping coal colliers of 120,000 to 150,000 dwt. The regulations enabling such operations should be approved within the next 30 to 60 days.

It is our understanding that several carriers will be using the anchorage by the fall, topping vessels of 150,000 dwt. Potential savings are $6 to $8 per ton of coal to Europe and $8 to $15 to the Far East.

An analysis of whether the Federal Government will be able to keep pace with inland and coastal navigation needs without major changes in existing cost sharing shows clearly that the Federal Government reaps an annual bonanza from ports with minimum expense. Our waterways do not wear out. They merely require minimal annual maintenance of $300,000,000-$400,000,000. The benefits to the U. S. Government in federal tax revenues and Customs duty collections are astronomical in comparison. As stated in the body of our testimony, our port, which is similar in profile to all major U. S. ports, supports with our deepwater channel, seven major refineries, ten major chemical manufacturers, a major steel mill, four gypsum manufacturers, four major food processors, a Navy Yard and many other water-related industries. The Federal corporate taxes received from these industries in our region alone more than equals the national annual maintenance dredging costs. The Federal Government has invested in Port infrastructures. It has reaped its rewards manyfold and so long as it continues to carry out its responsibility for maintenance, I will contine to do so.

JRK:RGH:JE
6/20/83

Statement
of
Jack M. Park
Vice President, Governmental Relations

Before the

Subcommittee on Water Resources
of the
Committee on Environment and Public Works

United States Senate
on
Harbor Improvement Legislation

S.865 - "Deep-draft Navigation Act of 1983"
S.970 - "National Harbor Improvement and Maintenance Act of 1983"

June 21, 1983

Mr. Chairman, members of the Subcommittee, Crowley Maritime Corporation appreciates this opportunity to express its views concerning funding for the operation and maintenance and the widening and deepening of harbors and channels.

Crowley Maritime Corporation is a large maritime transportation company headquartered in San Francisco, Until recently we identified ourselves solely as a tug and barge company. In December 1982, however, we acquired Delta Steamship Lines, Inc. and our interests expanded to include liner service in international trade. Our testimony today, may, therefore, be somewhat unique, because it will address the subject of this hearing from the perspective of both a shallow-draft barge operator and a deep-draft (a relative term) liner operator.

Our tug and barge operations consist of both contract and common carrier services. Crowley subsidiary companies' common carrier services connect the contiguous United States with Alaska, Hawaii and the Caribbean.

- Alaska Hydro-Train is a roll-on/roll-off railcar service using 400 X 100 ft., 14 ft. draft barges which depart weekly year-round towed in tandem by 9,000-h.p. tugs from Seattle to Whittier, Alaska.

- Pacific Alaska Line-West makes seasonal barge sailings from Seattle to western Alaska ports and north to Pt. Barrow. The equipment used is sized to the type and volume of cargo.

- Hawaiian Marine Lines links Seattle, Portland, and Oakland with Honolulu using 400 foot covered and flat-deck barges to carry unitized, containerized and breakbulk cargo.

- Trailer Marine Transport operates the world's largest roll-on/roll-off triple-deck barges between, on the one hand, Philadelphia, Jacksonville, and Lake Charles, and on the other hand, San Juan. The 580 X 105 ft. barges, with a draft of 11 feet, carry up to 376 forty-five foot trailers. Service is provided from San Juan to ports throughout the Caribbean Islands.

Contract services are provided worldwide. In the areas affected by the port dredging bills under consideration the services include barging of petroleum products, grain, fertilizer, drilling rigs, dredging equipment, processing plants, prefabricated housing, and prebuilt building modules. In addition to calls at major ports, our vessels also call regularly and frequently at smaller ports such as Crescent City and Eureka, California; Coos Bay, Oregon; Bethel, Dutch Harbor, Wainwright, Kotzebue, Nome, Dillingham, and Ketchikan, Alaska, and many others.

Liner operations, provided by Delta Steamship Lines, are served by LASH/container ships, combination passenger/cargo liners, and breakbulk/container ships. The company serves five trade routes between ports in all three U.S. coasts and destinations in the Caribbean, Canada, Mexico, Central and South America, and West Africa - an area which encompasses some 40 nations.

The first thing I would like to do is to acknowledge the obvious effort put forth in drafting S.865 and S.970. The problem of funding the operation, maintenance, and new construction of our harbors and channels in the face of mounting federal and state deficits and the divergent views of governments, ports, carriers, and shippers is indeed a thorny one. Sponsors of the bills have encouraged debate on their proposals and have been open-minded on suggestions. Many of my comments will be negative, but they are not intended to reflect adversely on the conscientious work of the bills' sponsors and their staffs.

Most of the debate until now about port dredging has focused on the varying impacts on ports with naturally deep harbors contrasted to ports whose existence and growth depend on substantial, continuous, and additional dredging. The perceived need for deepening of harbors has been based primarily on the possibility of expanding coal exports and facilitation of oil transfers to super tankers. Almost lost in the shuffle is that portion of the industry which is not dependent on additional dredging, but that relies on maintenance dredging to varying degrees depending on the drafts of vessels and the ports served.

The Subcommittee on Water Resources deserves to be complimented for now offering that portion of the industry the opportunity to be heard. My testimony will be from the perspective of a tug and barge operator and a liner operator and is intended to be representative of those industry segments; not just Crowley Maritime Corporation.

I would like to discuss first funding for operation and maintenance and then funding for improvements.

Operation and Maintenance

As I understand S.865, non-federal funding for O&M would be 40%, to be paid for by a fee assessed against the value of cargo. Interpretation of that general statement as to its application as explained in the 52 page bill has not been easy. The bill states, for example, that:

- The new section 4231 to Chapter 33 of the IRS Code provides for a tax on foreign imports and domestic cargo ("cargo unloaded").
- The new section 4232 provides for a tax on cargoes aboard vessels using any Great Lakes navigation improvement operated or maintained by the U.S.
- The new section 4233 provides for a tax on vessels

which do not load or unload cargo, but whose purpose(s) would include convenience, bunkering, refitting, or repair. The amount of tax would be prescribed by the Secretary of the Treasury, subject to limits.

- Exports ("foreign-bound commercial cargo") are taxed in the same manner as imports and domestic cargoes except the tax is identified as a "qualified state vessel tax").
- The ad valorem tax is assessed for cargoes on vessels which when fully loaded require 20 feet nominal depth of water, or vessels of lesser draft in direct competition with deep-draft commercial vessels. We are advised that direct competition need not actually exist; potential competition would qualify.
- The owner of the vessel is liable for payment of the tax.
- It is unlawful for a vessel to depart from United States waters without paying the tax in full.

Several questions and potential problems are raised by these provisions.

- Determination of the value of a vessel's cargo would be difficult, untimely, and in some cases impossible. The mandated requirement that shippers provide the value prior to loading the cargo is probably not feasible. In international trade the value of cargo is not normally shown on the bill of lading or manifest; it appears on the Shipper's Export Delclaration. The SED should be given by the shipper to the carrier with the bill of lading. The carrier must provide the SED's to customs within four days after sailing from each port. Shippers frequently fail to get the SED's to carriers before the four day deadline on the carriers to submit SED's to customs. In domestic trade the value of the cargo is not identified. A sizable percentage of cargo shipped both domestically and internationally is consolidated by freight forwarders or NVOCC's into containers, many of which are stuffed the day of sailing. The Military Transportation Control and Movement Document does not show the value of cargo. (Note that although vessels owned by the U.S. government are excluded, government cargo is included).

- Modern container ships load cargo practically up to the last hour before sailing. Terminals do well to compute necessary stability data before sailing. They could not compute value of cargo before sailing. Ships departures can occur any time of the day or night, seven days a week.

- Most, but not all, barges have drafts less than 20 feet. Whether the barges with less than 20 foot draft actually or potentially compete with deep-draft vessels is subject to interpretation. For example, barge shipment of petroleum products in coastwise trade has increased in recent years with the demise of small tankers. Will someone undertake to determine whether small tankers are in fact operating in competition, or could operate if they existed, or distinguish trade routes in which competition exists or does not exist, and would taxes be assessed on one trade route and not another?

- Draft of the vessel is not a factor in assessing a tax on vessels used for purposes other than loading or unloading of commerical cargo. A barge engaged in bunkering would therefore be taxed even though its draft was less than 20 feet and it did not compete with a deep-draft vessel.

S.970, by contrast, for the non-federal portion of O&M costs, would simply assess a uniform tonnage fee against cargo carried on vessels with a maximum design draft of more than twelve feet engaged in commercial waterway transportation. The non-federal portion would be 30% in FY 1984 and rise to 50% beginning in FY 1988. This bill has the virtue of simplicity, but its silence regarding the fee collection mechanism creates a void regarding the administration of collections.

- Although Section 302(a) defines "deepwater channels and harbors" as those maintained at water depths greater than 20 feet, tonnage fees would be assessed on vessels having a maximum design draft of more than 12 feet. Why should a vessel between 12 and 20 feet draft be assessed a tax when little or nothing is done for it?

- The fee assessed is "per ton", but the kind of ton is not specified. There are several tonnage measures, used in shipping, i.e., short, long, metric, measured, revenue. It is understood that the intent is that short tons would be used, but it should be so stated.
- It is unlawful for a vessel to depart from the United States waters without paying the tax in full. Computation of a tonnage tax would be much simpler and more feasible than computation of an ad valorem fee. It is impractical however to pay the tax before sailing because of time constraints.

Having discussed some of the details of the bills concerning operation and maintenance, there remains the larger question of the philosophy of assessing user charges for O&M. We believe that several reasons considered together, warrant the federal government financing all of such costs.

First, a uniform fee, whether ad valorem or tonnage is not representative of the benefits received. A barge, for example, requires no dredging, yet the rate of taxation is the same as for deep-draft ships, assuming, in the case of S.865, that the two types compete. This discriminates against the oceangoing tug and barge coastwise industry that has shown such a technological advance in the past several decades. The harbors and channels used by this type of equipment do not need to be dredged for the oceangoing tugs and barges but for the self-propelled deep-water ships that generally have a draft of between 27 and 35 feet. This tonnage fee would place an undue burden on a technologically advanced system of transportation that has shown itself in recent years to be more efficient and economical in this trade than self-propelled vessels that have a greater draft.

Second, it is the shippers or consignees of the cargo who will pay the fees which will either be identified separately on freight invoices or incorporated as a cost of doing business in the freight rate. Industries, such as agriculture, which are already struggling, and many of which are receiving government subsidies, will have an additional cost to pay. Ultimately, what the consumer saves in taxes, he or she will pay in the price of goods. Alternatively, the price may become uncompetitive on the world market, resulting in loss of sales, bankruptcies, increased unemployment, and increased federal transfer payments.

Third, foreign competition in international trade is increasingly subsidized by foreign governments. The opposite is happening in the United States. Dredging user fees would aggravate that trend.

Fourth, traditionally, landside facilities have been financed by non-federal interests because, among other things, the type and size of such facilities can be conformed to particular needs of individual interests. The federal financing of waterways has been accepted as a stimulator and facilitator of trade, the benefits of which are spread over a wide spectrum of industries and people.

Fifth, the proposed dredging users fee is one of four users fees now being considered or in existence affecting vessels. Those under consideration are Coast Guard users fees and shallow-draft vessel users fees. There is presently an Inland Waterways Fuel Tax which will rise to 8 cents per gallon of fuel on October 1, 1983 and to 10 cents per gallon the following fiscal year. Some vessels could find themselves subject to two or more of such taxes and the aggregate of the several taxes could be especially harmful to their economic viability. It is conceivable for example that certain barges could be subject to all four taxes.

Port Improvements/New Construction

Both S.865 and S.970 provide for "fast-tracking". This no doubt is welcomed by those who have waited impatiently for years to get projects underway. There is of course a price to pay. Non-federal funding would be required to differing but significant degrees in each bill and under different dredging depth scales S.865 proposes to fund the federal share from customs revenues and authorizes local port authorities to fund their share from any lawful source. S.970 provides for local ports to collect "cargo or vessel fees or tolls or harbor user charges" which "reflect to the maximum extent practical the service and benefits provided to each commercial vessel or cargo laden . . ." Public hearings are mandated.

The use of customs revenues for harbor improvements is especially commentatory. A substantial portion of those revenues are now being transferred to the Department of Agriculture for, no doubt, worthy causes, but causes not directly associated with the payors of these customs duties. We believe, however, that the customs revenues should be used to help pay for the non-federal share (assuming local sharing is legislated). The shippers who paid the customs fees are "users" in the sense of this legislation.

The vagueness of the language in both bills as to how the non-federal share for improvements should be generated is a cause for alarm among companies such as ours. We are inclined to believe that the need for deeper harbors in the numbers and locations which have been discussed has been exaggerated. Nevertheless, there may well be projects that can be justified to enhance regional or industrial development or national defense. It would be entirely inappropriate however, to lay on the backs of barge operators or liner operators the costs for dredging in excess of their requirements.

Senator Abdnor's letter inviting me to testify encouraged comment as to the ability of our Nation to obtain priority development at an early time of one or two 55-foot ports under the terms of S.865 S.970, or alternative approaches. Since there are already two such ports (Seattle/Tacoma and Los Angeles/Long Beach) I assume that two additional ports is intended by the question, and presumably specialized ports for the handling of coal. I consider myself poorly qualified to make that judgment. Instinctively, it would seem that ports that have a broad industrial, financial, and transportation tax base, who forsee a need that when met can enhance economic conditions in their geographic area, will take advantage of either of the bills, although S.865 would be the preferable bill. On the other hand, the rather substantial local share required for new construction and then ongoing maintenance would probably discourage small, isolated ports dependent on single commodities. It is conceivably a situation where the rich get richer and the poor get poorer.

In summary:

Crowley Maritime Corporation operates tugs and barges that do not benefit from harbor and channel dredging and liners that do not require dredging beyond 38 feet.

S.865 has provisions that are difficult to interpret and would be difficult to apply.

An ad valorem basis for fees, although proposed for the non-federal share of O&M costs (not new construction), is nevertheless an inappropriate basis, since weight of the vessel and its cargo and vessel design are determinates of draft - not the value of goods carried. Both bills are vague as to how non-federal shares for the costs of new construction will be generated by local authorites. Such vagueness could lead to assessments against non-beneficiaries.

The Federal government should continue to fund port dredging costs - operation, maintenance, and improvements - as an incentive for America's international trade, for the enhanced value of ports in national defense, and because of the problems in assessing user taxes equitably.

Thank you for this opportunity to testify. If there are any questions I'll be pleased to try to answer them or to get the answers.

STATEMENT OF

STEPHEN A. VAN DYCK
PRESIDENT
SONAT MARINE INC.

BEFORE THE

SUBCOMMITTEE ON WATER RESOURCES
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

June 21, 1983

Good morning Mr. Chairman and members of the Subcommittee. My name is Stephen A. Van Dyck. I am President of Sonat Marine Inc., which is the nation's largest independent U.S.-flag carrier of petroleum products. We operate a fleet of 40 tugs, and 54 barges on the Atlantic and Gulf coasts. These barges range in capacity from 5,000 barrels to 262,000 barrels.

I am glad to have this opportunity to appear before you today, and am particularly pleased that the Subcommittee has solicited the testimony of U.S.-flag carriers. Both the general subject of deep-draft user fees and the specific provisions of the bills under consideration, S. 865 and S. 970, are of critical importance to the U.S.-flag merchant marine.

Mr. Chairman, Sonat Marine has very serious reservations with not only the provisions of the legislation under consideration by this Subcommittee, but also with the entire conceptual approach which we have seen thus far from the Congress and the Administration toward the issue of port development. We believe that the existing consideration of port development fails to recognize the federal role in the nation's port system and does not appropriately link user fees for port development to the true beneficiaries of that development. We believe the narrow focus of the port development debate ignores the widespread benefits conferred on the national and regional economies and unfairly singles out U.S. carriers to bear the brunt of port development financing. We believe that this approach can only contribute to the further demise of the U.S. merchant fleet, in direct contradiction to longstanding federal policies which are designed to maintain a viable U.S. merchant marine.

I would like to explain each of our concerns with this legislation in detail. However, before I do so, it is important to make some general remarks about the U.S.-flag merchant marine as a whole, and Sonat Marine in particular, which will serve as a foundation upon which to evaluate the effects and propriety of this legislation.

THE U.S.-FLAG FLEET

The U.S.-flag oceangoing merchant fleet is divided into two essential segments -- those vessels engaged in the nation's foreign trade, and those engaged in domestic commerce. These two fleets operate under very different government programs, competitive frameworks, and economic principles.

The U.S.-flag fleet as a whole is in disastrous shape. As a result of the continual diversion of America's foreign commerce from U.S.-flag vessels to foreign-flag vessels, there has been a drastic decline in the size of our deep-draft fleet. In 1950, America had a merchant fleet in excess of 1,000 actively employed vessels. Today, that fleet has shrunk to less than 475 vessels. Since 1950, employment aboard these vessels has declined by more than 40,000 jobs. Needless to say, we have simultaneously witnessed a steady decline in the amount of our import and export cargoes carried by American ships. U.S.-flag vessels, which carried 42 percent of America's foreign trade in 1950, now transport less than five percent of that commerce.

The situation of America's domestic trading fleet has been less precipitous. While the number of deep-draft ships engaged in domestic commerce has indeed declined, the shallow draft sector of the industry has experienced a slow growth. For example, while the domestic fleet moved 651 millions tons of cargo in 1950, that total had increased to over one billion tons by 1981, a compound annual increase of only 1.7 percent. The financial condition of many operators in the domestic trade has been marginal at best. Indeed, nearly 15 percent of the domestic coastwise fleet is now idle due to lack of cargo, and bankruptcies have become increasingly common with little prospect that increased demand will reverse the trend.

The relative difference in the state of our foreign trade fleet versus the domestic fleet is due in large part to the Jones Act. This law, enacted in 1920, seeks to insure that the United States has a healthy and stable merchant fleet by reserving cargoes moving in domestic commerce to U.S.-flag vessels, built in and documented under the laws of the United States and owned and crewed by American citizens. Under the Jones Act umbrella, the United States is provided with a competitive and cost-efficient industry prepared to render critical sealift capabilities during national emergencies or conflicts.

SONAT MARINE INC.

As I mentioned earlier, Sonat Marine is the nation's largest independent marine carrier of petroleum products. Under the auspices of the Jones Act, Sonat Marine moves millions of barrels of petroleum products daily along the Atlantic and Gulf coasts of the United States, serving over 20 of the nation's ports on a regular basis. A map showing those ports which we serve is attached as Appendix A. Indeed, in a single year, our barges carry more than 230 million barrels of petroleum, enough to meet the energy needs of the entire United States for two weeks. Our other services include tanker lightering in the Delaware Bay and other areas where crude oil and other products are partially off-loaded to our barges from tankers too heavily laden to enter ports or reach refinery piers; ship bunkering, or refueling of all sizes of vessels; and general towing services.

Sonat Marine's East Coast operations involve transportation of petroleum products from refineries to terminals and distribution points along the Atlantic Coast from the Canadian Maritime Provinces to the Straits of Florida. Headquarters for the East Coast operations are in Philadelphia, which is second only to Houston as the largest refinery center in the United States. Sonat Marine is by far the major barge operator in the Philadelphia and Delaware Bay area, the Chesapeake Bay, and along the Atlantic Seaboard. Our Gulf Coast operations, headquartered in Tampa, move refined petroleum products from major refineries in Texas, Louisiana, and Mississippi to ports along the Atlantic and Gulf Coasts. Sonat Marine is the largest independent barge operator in the Gulf Coast market.

Mr. Chairman, with the foregoing in mind, I would like to now address the specific concerns we have with both the conceptual approach to the issue of port development and the provisions of the legislation before us. I believe that it is also very important to consider the impact of this legislation on the American merchant fleet, and to examine the policy implications which must be carefully considered prior to the enactment of any port development legislation.

THE QUESTION OF PORT DEVELOPMENT FINANCING

The two bills now under consideration by this Subcommittee, S. 865 and S. 970, like many of the nearly 30 port development bills introduced in the last Congress, seek to generate funds for port construction, operation, and maintenance through the imposition of a fee on vessel operators. Sonat Marine takes serious exception to the simplistic premise that a tax or fee on vessels operators is the appropriate mechanism for funding the development and maintenance of U.S. ports. Indeed, we believe that imposing a tax on vessel operators ignores the fundamental hypothesis of user fees which purports to charge beneficiaries for benefits derived, and fallaciously assumes that vessel operators will be able to pass through such taxes to the true beneficiaries.

With respect to the question of new construction, Sonat Marine believes that this Subcommittee must give serious examination to the actual beneficiaries of port and channel deepening. A good example is the recent movement to expedite the development of U.S. ports with drafts sufficient to accommodate large coal colliers. The advocates of port deepening seek to fund that development through an indiscriminate tax on all vessel operators, without respect to the actual benefit which those vessel operators derive from the deepening project.

The large majority of vessels calling at U.S. ports do not require drafts as deep as those contemplated for the U.S. coal export trade. Consequently, these vessels would essentially be forced to contribute to construction projects which they neither need nor want. It appears to us that those who gain the most from the deep ports which will make American coal more attractive on the world market, i.e., coal companies, coal miners, terminals, foreign-flag vessel operators, foreign purchasers, and especially railroads, are conspicuously absent from the financing equation. If the movement toward lesser federal involvement in port financing is truly predicated on the basis of charging beneficiaries an equitable fee for benefits derived, it is then incumbent to fairly and accurately identify the actual beneficiares of port projects, be they waterborne or shoreside.

The question of linking the user fee to the project beneficiary also extends to the financing of port operation and maintenance. The bills before us today will require considerable segments of the domestic Jones Act fleet to contribute to the maintenance of drafts which their vessels do not need. For example, S. 865 imposes its fee on vessels requiring a channel depth of at least 20 feet, and S. 970 imposes its fee on vessels having a draft of more than 12 feet. Even more onerous is a provision in S. 865 which renders the 20 foot draft cutoff virtually meaningless by requiring shallow draft vessels to pay user fees if they do or could compete with commercial vessels subject to the fee.

Sonat Marine has intentionally developed a fleet of tugs and barges which can operate in shallow draft channels and ports. In fact, none of the 40 tugs operated by Sonat Marine requires a channel depth in excess of 20 feet nor do most of our barges. Therefore, the requirement that shallow draft vessels pay a user fee for port development and operation and maintenance is not only inequitable but also injurious since it requires us to contribute to projects from which we derive no benefit and which actually assist our deep-draft competition.

IMPACT ON THE JONES ACT, THE U.S. DOMESTIC FLEET, AND SONAT MARINE

One of the cruelist ironies of this legislation is that while it would provide no benefits to the domestic shallow-draft fleet and only limited benefits to the domestic deep-draft fleet, it would nonetheless have its greatest impact on these historically stable segments of the U.S.-flag merchant marine. For example, in 1981, U.S.-flag deep-draft vessels and ocean-going tugboats transported 502 million tons of cargo to, from, and between America's deep-draft ports. Foreign commerce comprised only 34 million tons of that total. 93 percent, or 468 million tons, was Jones Act cargo. Consequently, it is extremely important to recognize that although we may tend to think of port development legislation as a means to foster American foreign trade, its primary effect with respect to the U.S.-flag merchant marine will overwhelmingly be on American operators engaged in domestic commerce.

Perhaps the best way to illustrate the substantial impact of this legislation on American domestic operators is to quantify the effect using Sonat Marine as an example.

S. 970 proposes the imposition of a uniform cargo tonnage fee to recover port O&M costs on vessels having a maximum design draft of more than twelve feet which are engaged in commercial waterway transportation for all cargo transported via one or more deepwater channels or harbors. Beginning in Fiscal Year 1984, the tonnage fee would begin at approximately 8¢ per ton, increasing to approximately 16¢ per ton by 1988. We have estimated that when the legislation takes full effect, Sonat Marine would pay tonnage fees of approximately $3.4 million annually on our East Coast operations alone. We further estimate that tonnage fees for our Gulf Coast operations would be an additional $1.2 million per year, for a total annual user fee bill of $4.6 million.

As if that figure were not significant enough in and of itself, allow me to elaborate on several other variables which give it greater meaning. First, as I previously noted, we would receive little benefit in return for this expenditure since most of our vessels do not require channel depths in excess of 20 feet. Secondly, Sonat Marine's profit for 1982 was $2.5 million, generated from revenues of $131 million and assets of $235 million. Had we been subject to the provisions of S. 970 in 1982, our user fee bill would have nearly been double our profits. Third, it is likely that our user fee bill will greatly exceed the $4.6 million calculation since that figure does not include the new port construction user fees which will surely follow enactment of this bill as well. Lastly, it is important to recognize that Sonat Marine is one of the more profitable and successful carriers in the Jones Act trades. Indeed, we are and have been in better financial condition than any of our independent competitors. Consequently, user fees of this magnitude will undoubtedly have a much more serious impact on less profitable companies and on the smaller operators who do not enjoy the economies of scale that Sonat Marine does.

Unfortunately, Mr. Chairman, that is the good news. We project that the impacts of S. 865 will be even more disastrous for both Sonat Marine and the domestic coastwise fleet. As I noted earlier, Sonat Marine is engaged almost exclusively in the carriage of petroleum products. Moreover, approximately 85 percent of the total U.S. domestic coastwise trade consists of crude petroleum and petroleum products. Petroleum products are one of the highest valued bulk cargoes transported in domestic waterborne commerce, as illustrated by the following list:

PRODUCTS	VALUE PER TON
Petroleum Cargoes:	
No. 6 Fuel Oil	$175
No. 2 Fuel Oil	$225
Leaded Regular Gasoline	$306
Unleaded Regular Gasoline	$323
Crude Oil	$203
Other Bulk Cargoes:	
Contract Coal	$32 - 34
Spot Coal	$25 - 28
Iron Ore	$56
Steel Scrap	$76

Therefore, under the ad valorem concept of S. 865, another cruel irony arises -- American domestic carriers will be taxed more heavily than the foreign-flag coal colliers which require the deeper drafts which this bill seeks to provide.

Sonat Marine takes strong exception to the use of an ad valorem based fee to recoup the cost of financing port development projects. We believe that the ad valorem approach is discriminatory without justification since there is no relationship between the tax charged on the value of the cargo and the channel maintenance or depth required of the vessel transporting the cargo. It is inequitable that the vessel drawing 24 feet of water carrying 25,000 tons of unleaded regular gasoline will pay as much as two vessels drawing 55 feet of water each carrying 125,000 tons of coal.

The value of cargo carried aboard any particular vessel is not likely to substantially affect the extent to which that vessel utilizes the channel depths offered by a port. We therefore believe that it would be inequitable to charge a much greater fee to one vessel operator than another based simply on the value of the cargo being transported. Essentially, we believe that if the purpose of port development legislation is to charge the users of a port an equitable fee for the benefits which they derive from the use of that facility, the ad valorem concept is not only inappropriate but discriminatory.

The effect that enactment of port development legislation will have on the domestic fleet has serious policy implications as well. As I mentioned earlier, one of the primary purposes of the Jones Act is to insure that the United States has a healthy and stable merchant fleet. The national defense and economic considerations which prompted the enactment of the Jones Act in 1920 are even more important today, especially given the depressed state of the U.S.-flag foreign trade fleet. Therefore, it is important that we recognize that the potentially disastrous effects of port development legislation on the domestic merchant fleet are completely at odds with what the Jones Act seeks to accomplish. While we recognize the serious problem of an increasing federal deficit and the need for a modern port system, we cannot sanction the demise of a longstanding maritime and national defense policy as the cost of resolving those concerns.

Moreover, Congress is now considering several legislative initiatives which seek to revitalize the U.S. maritime industry. At a time when most of the industry is in a state of precipitous decline which the Congress is seeking to reverse, it would be inconsistent to enact legislation which would substantially contribute to the further demise of our merchant fleet.

THE ADMINISTRATIVE BURDEN ON DOMESTIC OPERATORS

Mr. Chairman, we also urge this Subcommittee to closely examine the administrative burden which will fall upon both domestic vessel operators and the collecting entity if deep-draft user fees are enacted. While S. 970 and S. 865 contemplate somewhat different mechanisms for the collection of fees, we believe that in both cases the administrative burden which results will be substantial.

Under the provisions of S. 970 and S. 865, while the fees are to be collected in accordance with the acts and regulations subsequently promulgated, the non-federal public bodies which will collect the fees are left with some discretion and independence, and it is likely that fee collection will be handled differently from port to port.

As previously noted, Sonat Marine's vessels serve over 20 ports along the Atlantic and Gulf coasts. Additionally, our records indicate that in 1982, Sonat Marine vessels accomplished over 9,500 separate cargo loadings and discharges. For example, a typical Gulf coast movement may often involve the loading of cargo at Corpus Christi, Texas, with the final discharge taking place at Port Everglades or Jacksonville, Florida. However, along the way, that vessel may also stop at Beaumont, Texas, Lake Charles, Louisiana, New Orleans, and Tampa, either loading additional cargo or discharging cargo at each port. Given our knowledge of the complexity of petroleum transportation, we believe that the taxes contemplated by S. 970 and S. 865 are unworkable and could never be properly assessed on petroleum products.

Moreover, as our review of S. 865 and S. 970 has indicated, it is the domestic U.S. fleet, which gains so little benefit from the bills, that will bear the greatest negative impact from their enactment. In this case, it will be the domestic operator, which frequently calls at U.S. ports, that will bear the administrative burden of compliance.

CONCLUSION

Section 101(a) of S. 865 states as a finding and declaration that "it is in the national interest to develop and maintain a viable marine transportation system for the United States, including an integrated network of deep-draft commercial seaports adequate to accommodate the needs of foreign and domestic commerce, promote economic stability and provide for the national security of the United States and its allies."

We concur wholeheartedly. Moreover, we are extremely pleased to see that the legislation wisely recognizes the strong link between a modern port network and a viable marine transportation system. Indeed, that thought has been the essence of our remarks today, together with the warning that it is foolhardy to pursue the development of one at the expense of the other. And that, Mr. Chairman, is the fundamental failure of the proposals now under consideration. In their present form, they will sap the resources of America's domestic merchant marine to fund the development of America's ports.

Sonat Marine believes that if it is truly in the national interest to develop and maintain a modern, integrated port system, the funding for that development and maintenance should continue to be, as it historically has been, a responsibility assumed by the nation as a whole. According to a recent study by the American Association of Port Authorities, the U.S. port system, by virtue of the customs receipts which it generates, provided the federal treasury with $6.5 billion in Fiscal Year 1982. This amount represents 70 percent of total customs receipts collected in that year. Additionally, of the 1.3 billion tons of cargo which moved in and out of U.S. deep-draft ports in 1981, 65 percent was foreign trade cargo. Therefore, it makes impeccable sense to us that a port development policy which seeks to foster America's foreign commerce through the timely maintenance of our ports should be funded through the use of customs receipts.

Mr. Chairman, in summary, allow me to review the essential points which comprise Sonat Marine's position on port development legislation:

- the cost of operating and maintaining existing U.S. channels and harbors should be funded through the use of customs receipts;

- the true beneficiaries of port and channel deepening should be identified, and should fund those projects from which they benefit;

- the imposition of port development user fees on vessel operators who derive no benefit from either port deepening or the maintenance of existing port depths is both unfair and injurious;

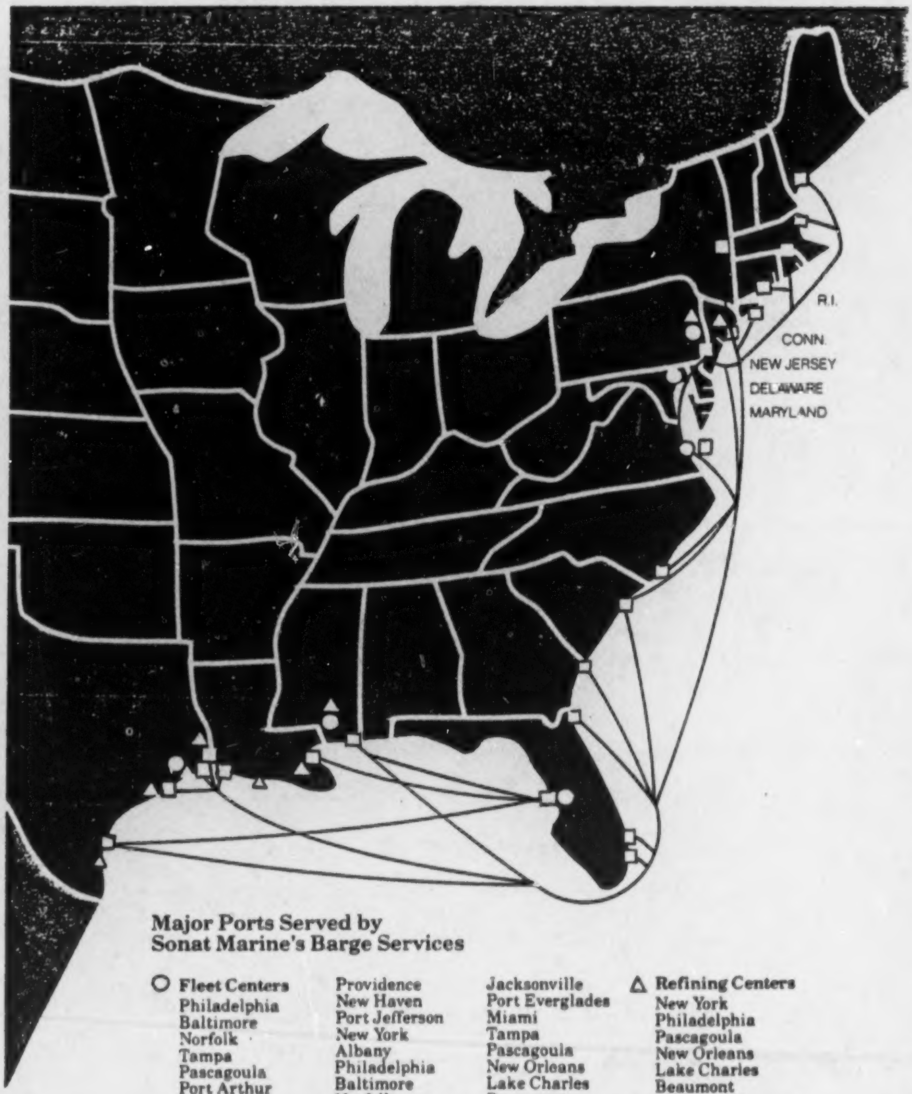
- the domestic merchant fleet would suffer the greatest negative financial impacts and administrative burdens of port development legislation currently before this Subcommittee, and would receive little or no tangible benefits;

- the impacts of this port development legislation would lead to the further demise on the domestic U.S. fleet, which would directly conflict with the longstanding maritime policy embodied in the Jones Act; and

- the ad valorem based tax discriminates against the U.S. coastwise domestic fleet, much of which is engaged in the carriage of petroleum products, and provides no relationship between the fee imposed and the benefits derived.

Thank you for this opportunity to present our thoughts on an issue which will have substantial impact on the future viability of both Sonat Marine and the U.S.-flag merchant fleet. I will be glad to answer any questions that you may have.

APPENDIX A



Major Ports Served by Sonat Marine's Barge Services

○ **Fleet Centers**
Philadelphia
Baltimore
Norfolk
Tampa
Pascagoula
Port Arthur

□ **Coastal Ports**
Portland
Boston
Providence
New Haven
Port Jefferson
New York
Albany
Philadelphia
Baltimore
Norfolk
Wilmington
Charleston
Savannah
Jacksonville
Port Everglades
Miami
Tampa
Pascagoula
New Orleans
Lake Charles
Beaumont
Port Arthur
Texas City
Corpus Christi

△ **Refining Centers**
New York
Philadelphia
Pascagoula
New Orleans
Lake Charles
Beaumont
Port Arthur
Texas City
Corpus Christi

REMARKS BY GEORGE J. RYAN

PRESIDENT, LAKE CARRIERS' ASSOCIATION

SUBMITTED FOR THE RECORD OF THE COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON WATER RESOURCES

JUNE 21, 1983
WASHINGTON, D. C.

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM GEORGE J. RYAN, PRESIDENT OF LAKE CARRIERS' ASSOCIATION. OUR MEMBERS ARE THE OWNERS OF U.S.-FLAG BULK SHIPS SERVING IN THE DOMESTIC TRADE. CARGOES INCLUDE IRON ORE FOR GREAT LAKES STEEL MILLS IN ILLINOIS, INDIANA, MICHIGAN, OHIO, PENNSYLVANIA AND NEW YORK; COAL FOR DOMESTIC POWER GENERATION AND EXPORT; GRAIN FROM MIDWESTERN FARMS; LIMESTONE, CEMENT, SAND AND PETROLEUM PRODUCTS.

THIS IS ABSOLUTELY THE WORST TIME TO BE CONSIDERING INCREASED TAXES IN THE FORM OF PORT USER FEES. THE 1982 RECESSION YEAR CAUSED SEVERE HARDSHIP IN THE MIDWEST AND THIS YEAR IS SHOWING ONLY SMALL SIGNS OF IMPROVEMENT. MINING TOWNS HAD MORE THAN 50 PERCENT UNEMPLOYMENT AND URBAN STEEL MILL CITIES HAD UNEMPLOYMENT UP TO 20 PERCENT. LESS THAN 50 PERCENT OF THE GREAT LAKES FLEET WAS EMPLOYED. THE SEVEN LARGE STEEL COMPANIES LOST $3.15 BILLION IN 1982. EVERY COST MUST BE CONTROLLED IN ORDER TO SURVIVE.

IT IS THE POSITION OF OUR ASSOCIATION THAT NO USER TAX LEGISLATION FOR O & M OF DEEP WATER PORTS SHOULD BE ENACTED UNTIL A

CONGRESSIONALLY SPONSORED ECONOMIC IMPACT STUDY BE CONDUCTED. THE STUDY MUST ESTABLISH THE LEVEL OF REGIONAL AND NATIONAL IMPACT ON THE MINING, STEEL MAKING, MANUFACTURING AND CONSTRUCTION INDUSTRIES.

CONCERNING THE CONSTRUCTION OF NEW HARBORS AND CHANNELS, OUR MEMBERS ARE SUPPORTIVE OF THE CONGRESS AND THE ADMINISTRATION IN THEIR SEARCH FOR A MARKET TEST FOR THESE NEW PROJECTS. LOCAL FUNDING BY THOSE INTERESTS WHO WILL BENEFIT IS NECESSARY IF WE ARE TO REDUCE FUTURE DRAWS ON THE FEDERAL TREASURY. PROJECTS SUCH AS THE SUPER COLLIER PORTS OVER 45 FEET IN DEPTH MIGHT BE REQUIRED TO HAVE LOCAL FUNDING UP TO 90 PERCENT WHILE OTHER PROJECTS WITH LESS OF A NEGATIVE IMPACT ON OTHER SECTORS OF THE ECONOMY OR WITH A GREATER FEDERAL INTEREST COULD HAVE A LOWER LOCAL FUNDING SHARE.

THE ASSOCIATION IS ALSO CONCERNED ABOUT VARIOUS PROPOSALS TO ELIMINATE THE U.S. COMPONENT OF THE TOLLS ON THE ST. LAWRENCE SEAWAY. WE BELIEVE THIS PROPOSAL SHOULD BE INCLUDED IN THE ECONOMIC IMPACT STUDY TO DETERMINE THE LEVEL OF HARM TO U.S. MINING AND STEEL MAKING. WE FEAR THE BENEFITS WILL ACCRUE PRIMARILY TO CANADIAN GRAIN INTERESTS AND OTHER FOREIGN ORE AND STEEL COMPANIES, AND NOT TO THE GENERAL CARGO INTERESTS IN OUR PUBLIC PORTS WHO FAVOR THE TOLL ELIMINATION.

ABOVE ALL, IN WHATEVER WATERWAY AND PORT USER TAXES WHICH ARE TO BE ENACTED, WE ASK THAT THE PRINCIPLES OF MODAL EQUITY, FEDERAL INTEREST AND USER PAY, USER SAY BE CLEARLY MAINTAINED. OUR NATION HAS GROWN GREAT IN PART BECAUSE OF THE COMPETITION BETWEEN THE TRANSPORTATION MODES, WHO USE THE VAST INFRASTRUCTURE, WHICH TIE OUR CENTERS OF LIVING, INDUSTRY AND CULTURE TOGETHER. IF USER TAXES ARE TO BE THE LAW OF THE LAND, THEY SHOULD APPLY TO ALL TRANSPORT MODES, INCLUDING THE RAILROADS, IF WE ARE TO PRESERVE THE COMPETITIVE BALANCE. THIS EQUITY MUST ALSO BE APPLIED WITHIN THE WATER MODE BECAUSE THERE IS A FEDERAL INTEREST IN OUR WATERWAYS AND PORTS FOR FLOOD CONTROL, IRRIGATION, NATIONAL SECURITY, DEFENSE, RECREATION AND THE PROMOTION OF DOMESTIC AND INTERNATIONAL COMMERCE. THE NAVIGATION INTERESTS MUST NOT BE REQUIRED TO COLLECT THE TAXES FOR THESE NATIONAL INTEREST FUNCTIONS OF OUR MULTI-PURPOSE WATER SYSTEM. AND LASTLY, AS A NEW PRINCIPLE WHICH MUST BE CLEARLY ENUNCIATED AS WE ENTER A NEW ERA OF USER CHARGES -- USER PAY, USER SAY. THIS PRINCIPLE IS ESSENTIAL IN ANY PARTNERSHIP AND PERMITS THE DOCTRINE OF MARKET TEST TO REALLY WORK.

OUR SHIPS AND THE MAJOR PORTS ON THE GREAT LAKES ESSENTIALLY SERVE THE MINING, STEEL, CONSTRUCTION AND MANUFACTURING INDUSTRIES IN THE MIDWEST. MOST OF THE TERMINALS WHICH HANDLE THESE CARGOES ARE PRIVATE TERMINALS WHICH ARE REACHED THROUGH NAVIGATION OF FEDERALLY MAINTAINED CHANNELS AND PORT ENTRANCES. OVER 90 PERCENT OF THE UP TO 200 MILLION TONS OF CARGO MOVED IN GREAT LAKES COMMERCE MOVES THROUGH THESE PRIVATE FACILITIES. THE SMALLEST CATEGORY OF CARGO CARRIED IN GREAT LAKES COMMERCE IS GENERAL CARGO WHICH IS

USUALLY LESS THAN FOUR MILLION TONS PER YEAR. THIS GENERAL CARGO IS HANDLED AT PUBLIC PORT AUTHORITY TERMINALS. THE DISTINCTION BETWEEN PUBLIC PORT AUTHORITY TERMINALS AND PRIVATE TERMINALS IS VERY IMPORTANT WHEN ONE CONSIDERS THE DOMESTIC TRADE, PARTICULARLY ON THE GREAT LAKES. NATIONAL PORT POLICY MUST GIVE SERIOUS CONSIDERATION TO THE DOMESTIC SHIP OPERATING INDUSTRY WHICH CARRIES LOW VALUE, HIGH VOLUME RAW MATERIALS THROUGH PRIVATE TERMINALS TO SUSTAIN THE INDUSTRIAL PRODUCTION AND EMPLOYMENT OF OUR NATION. LEGISLATION MUST NOT BE DRAFTED WITH ONLY THE PUBLIC PORT AUTHORITIES ENGAGED IN FOREIGN TRADE AND THE SUPER DRAFT PORTS IN MIND.

THE ECONOMY OF SCALE OFFERED BY VERY LARGE OCEAN BULK SHIPS AND THE OVERSEAS DEMAND FOR COAL HAVE COMBINED TO CREATE A NEED FOR SOME DEEP WATER PORTS IN EXCESS OF 45 FEET IN DEPTH IN THE U.S. IT IS SAID THAT THESE FEW SUPERPORTS ARE ESSENTIAL TO THE EXPORT OF AMERICAN COAL TO EUROPE AND JAPAN. THIS DEMAND FOR NEW SUPERPORTS HAS COME AT A TIME WHEN THE ADMINISTRATION WISHES TO INCREASE FEDERAL REVENUES THROUGH IMPOSITION OF USER TAXES ON THE DEEP WATER PORTS AND CHANNELS. ALTHOUGH BOTH ISSUES RELATE TO WATER, THEY ARE NOT THE SAME. THE DEVELOPMENT AND FUNDING OF SUPERPORTS CAN AND MUST BE TREATED SEPARATELY FROM A NATIONAL POLICY ON MAINTENANCE AND IMPROVEMENTS OF ALL OTHER PORTS -- H.R. 1512 MAKES THAT DISTINCTION.

THE LAKE CARRIERS' ASSOCIATION IS SUPPORTIVE OF H.R. 1512 -- THE PORT DEVELOPMENT AND NAVIGATION IMPROVEMENT ACT OF 1983 -- TO THE

EXTENT THAT IT RECOGNIZES THE NEED FOR RETENTION OF EXCLUSIVE FEDERAL FISCAL RESPONSIBILITY FOR OPERATION, MAINTENANCE AND IMPROVEMENT OF CHANNELS OF LESS THAN 45 FEET IN DEPTH. THE FEDERAL GOVERNMENT MUST NOT ABROGATE ITS RESPONSIBILITY FOR THE DEVELOPMENT OF THE WATER RESOURCES INFRASTRUCTURE SO ESSENTIAL TO THE COMMON GOOD OF ALL CITIZENS -- PARTICULARLY WHEN OUR WATER ASSETS ARE ALSO USED AND IMPROVED FOR AGRICULTURAL, RECREATIONAL, INDUSTRIAL, FLOOD CONTROL, AND OTHER PURPOSES, IN ADDITION TO NAVIGATION.

THE LAKE CARRIERS' ASSOCIATION ALSO STRONGLY ADVOCATES SECTION 207 OF H.R. 1512 WHICH WOULD MANDATE A MUCH NEEDED DEEP-DRAFT USER CHARGES STUDY. WE FULLY AGREE THAT THERE ARE FUNDAMENTAL QUESTIONS TO BE ANSWERED CONCERNING THE ROLE OF THE FEDERAL GOVERNMENT IN WATER RESOURCES DEVELOPMENT AND ECONOMIC IMPACT ON OUR BASIC MANUFACTURING AND MINING INDUSTRIES CAUSED BY IMPOSITION OF NEW TAXES ON WATERWAY USERS.

SOME OF THE SUPPORT BEHIND THE CONCEPT OF A NATURAL DEEP-DRAFT PORT USER TAX HAS BEEN GENERATED BY THE RECOGNITION THAT THE SUPERPORT CONSTRUCTION OVER 45 FEET IN DEPTH SHOULD BE PAID FOR THROUGH LOCAL FINANCING. IN THIS MANNER, AN IMPORTANT "MARKET TEST" WOULD DICTATE THAT ONLY THOSE PROJECTS WORTHY OF THE RESOURCES WILL BE BUILT. THE LAKE CARRIERS' ASSOCIATION FULLY SUPPORTS THE CONCEPT THAT NEW PORT-IMPROVEMENT PROJECTS SHOULD BE PAID FOR THROUGH LOCAL FUNDING, EVEN UP TO 100 PERCENT IN SOME CASES.

ONE OF THE REASONS WE BELIEVE THE MARKET TEST IS SO NECESSARY FOR PORTS OVER 45 FEET IN DEPTH IS BECAUSE THE DREDGING OF THESE CHANNELS WILL CHANGE THE COMPETITIVE POSITION OF OUR NATION'S MANUFACTURING AND SHIPPING INDUSTRIES. ALTHOUGH THESE PORTS ARE SAID TO BE NEEDED TO OPTIMIZE THE EXPORT OF COAL, A CHANNEL DOES NOT DIFFERENTIATE BETWEEN THE CARGO CARRIED BY A SHIP -- THESE SAME CHANNELS WOULD FACILITATE THE IMPORT OF FOREIGN ORE TO THE DETRIMENT OF ORE FROM MICHIGAN AND MINNESOTA. SUCH A NEW MOVEMENT OF FOREIGN ORE COULD ULTIMATELY LEAD TO GREATER UTILIZATION OF EAST AND GULF COAST STEEL MILLS TO THE DETRIMENT OF THOSE IN THE MIDWEST. THESE SAME CHANNELS WOULD FACILITATE THE EXPORT OF U.S. GRAIN, AGAIN TO THE DETRIMENT OF GREAT LAKES PORTS. WE DO NOT BELIEVE THESE NEW SUPER-DRAFT PORTS, WHICH WOULD HAVE SUCH A DEVASTATING EFFECT ON THE GREAT LAKES ECONOMY, SHOULD BE PAID FOR WITH MIDWEST TAX DOLLARS.

WE DO NOT BELIEVE THAT USER TAXES ARE DESIRABLE OR NECESSARY TO PAY FOR OPERATION AND MAINTENANCE EXPENSES OF EXISTING HARBORS. THIS IS PARTICULARLY TRUE FOR THE GREAT LAKES DOMESTIC TRADES WHICH SERVICE THE MINING AND STEEL INDUSTRY IN THE MIDWEST.

FUNDS ARE AVAILABLE THROUGH CUSTOMS REVENUES TO PAY FOR ALL OPERATION AND MAINTENANCE DREDGING. THESE FUNDS WOULD NOT BE AVAILABLE IF THERE WERE NO PORTS; WHY NOT EARMARK SOME OF THE CUSTOMS REVENUES TO PAY FOR DREDGING?

OUR NATION'S BASIC INDUSTRIES CANNOT AFFORD TO PAY THE CUMULATIVE USER TAXES WHICH WOULD BE LEVIED ON THE INGREDIENTS GOING

INTO THE PRODUCTION OF STEEL. IT TAKES THREE TONS OF IRON ORE, LIMESTONE AND COAL TO MAKE ONE TON OF STEEL. THE SLAG BY-PRODUCT AND THE FINISHED STEEL ALSO MUST BE TRANSPORTED. ALL OF THESE INGREDIENTS MOVE IN DOMESTIC TRADES AND ARE HANDLED AT PRIVATE TERMINALS. THEY ARE LOADED AT ONE PORT, MOVED THROUGH FEDERALLY MAINTAINED LOCKS AND CHANNELS AND DISCHARGED IN ANOTHER PORT. SOME OF THE PRODUCT IS TRANSFERRED TO STOCKPILES FOR STORAGE UNTIL IT IS RELOADED ONTO ANOTHER SHIP. THE CUMULATIVE IMPACT OF ANY USER TAX APPLIED ON EACH PRODUCT AT EACH MOVE WOULD BE DEVASTATING.

WE URGE CONSTRAINT ON THIS HEADLONG PLUNGE TO ENACT REVENUE-ENHANCEMENT MEASURES WHICH COULD FURTHER CRIPPLE OUR NATION'S FRAGILE STEEL, AUTO AND MINING INDUSTRIES.

IT IS FOR ALL OF THE ABOVE REASONS THAT WE ARE VERY CONCERNED WITH SEVERAL OF THE DEEP-DRAFT USER TAX BILLS RECENTLY INTRODUCED IN CONGRESS. SENATOR HATFIELD INTRODUCED S. 865 -- THE "DEEP DRAFT NAVIGATION ACT OF 1983"; SENATOR MOYNIHAN PROPOSED S. 970 -- THE NATIONAL HARBOR IMPROVEMENT AND MAINTENANCE ACT; AND CONGRESSMAN MATSUI SUBMITTED H.R. 2406 AS ANOTHER DEEP-DRAFT PORT DEVELOPMENT BILL.

THE LAKE CARRIERS' ASSOCIATION AND ITS MEMBERS CANNOT SUPPORT AND MUST OPPOSE THOSE LEGISLATIVE EFFORTS WHICH WOULD LEVY A BURDENSOME TAX ON THE BASIC MANUFACTURING, STEEL, SHIPPING AND MINING INDUSTRIES WITHOUT ANY REGARD FOR OR ANALYSIS OF THE NEGATIVE ECONOMIC IMPACT ON THE GREAT LAKES ECONOMY.

We are also seriously concerned by provisions in S. 865 and H.R. 2406 which would distort the competitive balance in the U. S. markets for iron ore and basic steel. These bills would remove the U. S. component of the toll on the St. Lawrence Seaway and would seek Canadian government assent to removal of all Seaway tolls. We must oppose these efforts because of the clear and immediate damage the removal of the tolls would do to iron ore mining in Minnesota and Michigan, as well as to the Midwest steel industry.

The removal of the Seaway tolls would decrease the cost of delivering Japanese and European steel to Cleveland, Detroit, Chicago and other U.S. cities, while at the same time increasing U.S. steel producers' costs. It would increase the cost of American steel producers who use Michigan and Minnesota iron ore, but would decrease the cost of production if iron ore from foreign sources were used. The foreign ship owner would pay less in transportation costs when going in and out of the Seaway, but the U.S.-flag domestic ship owner would pay higher transportation costs. We do not believe Congress would wish these results to stem from any port improvement or user tax bill.

The United States must have a port and waterway policy which recognizes the economic, social, environmental and national defense benefits to the water transportation infrastructure so vital to domestic and foreign trade. There is and always will be a Federal interest in our waterways.

WHILE THE ISSUE OF FINANCING SUPER-DRAFT PORTS MUST BE ADDRESSED, IT MUST NOT BE LINKED TO SOLVING ALL THE PROBLEMS ASSOCIATED WITH THE PORT AND WATERWAY INDUSTRY. TO DO SO IS TO HOLD THE NATION'S PORT ECONOMY HOSTAGE TO THE SUPERPORT DREDGING ISSUE.

WE BELIEVE SEPARATE LEGISLATION SHOULD GO FORWARD TO PERMIT FAST TRACKING OF MAJOR NEW CONSTRUCTION PROJECTS SUCH AS THE SUPER COAL PORTS -- WITH APPROPRIATE LOCAL FINANCING.

WE ASK CONGRESS TO AUTHORIZE THE NECESSARY ECONOMIC IMPACT STUDY OF THESE VARIOUS USER CHARGE PROPOSALS FOR OPERATION AND MAINTENANCE BEFORE ENACTING BROAD USER TAX COLLECTION REQUIREMENTS FROM THE WATER TRANSPORTATION INDUSTRY.

STATEMENT OF
OCEAN COMMON CARRIERS
REGARDING
PORT USER FEE LEGISLATION (PARTICULARLY OPPOSING AD VALOREM PORT USER FEES)

BEFORE THE

WATER RESOURCES SUBCOMMITTEE

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

JUNE 21, 1983

Mr. Chairman and Members of the Subcommittee:

Good morning. My name is Marc J. Fink. I am an attorney with the law firm of Billig, Sher & Jones, P.C. I appear today on behalf of ten ocean common carriers of freight--Barber Blue Sea Line; Barber West Africa Line; Hellenic Lines; Hessa Line; Lykes Bros. Steamship Co., Inc.; A.P. Moller-Maersk Line; Nedlloyd Lines; The National Shipping Co. of Saudi Arabia; United Arab Shipping Co.; and Waterman Steamship Corp.-- serving the foreign commerce of the United States.

The carriers submitting this statement collectively serve virtually all major U.S. ports. We believe that these carriers (and their views on port user fee issues) are representative of the entire class of ocean common carriers serving the U.S. foreign commerce. Indicating the representative nature of these views, Sea-Land Service, which is presenting a separate statement to this Subcommittee, has advised us that it also concurs with the views expressed in this statement.

I. Introduction

Ocean common carriers, frequently referred to as liner carriers, play a vital role in the commerce of this country, serving both exporters and importers by providing regularly scheduled service for the carriage of general cargoes between the ports of this country and foreign ports. In that liner carriers provide regularly scheduled service and accept small as well as large cargoes, they provide virtually all of the export/import ocean carrier service utilized by small and medium sized businesses, as well as a great deal of the ocean service utilized even by the largest companies.

Moreover, liner carriers generate substantial employment and economic activity at ports. For example, they have agents in ports; they own property in ports; and they utilize the services of stevedores, longshoremen, and suppliers of commodities needed to operate ocean-going vessels with crew, such as fuel, food, and other supplies. Liner carriers thus contribute very significantly to the overall economic welfare of the port community.

We believe that our views are of particular importance because, from our review of the various port user fee bills now pending in the Congress (S. 970, S. 865, and H.R. 1512) it appears that liner carriers will have to pay a significant and, in the case of some proposals, disproportionate share of any port user fees that result from enactment of new legislation. While other interests may speculate as to the indirect effects of proposed port user fees on them, liner carriers would be directly affected, and we hope that the

Congress will give careful attention to the views of those most directly affected by these legislative proposals.

With this background in mind, we turn to the views of this major group of port users on the subject of port user fee legislation.

II. Liner Carriers Oppose Port User Fees

At the outset we wish to make clear our (the liner carriers') general opposition to legislation which would impose fees on port users for the purposes of funding the dredging of harbors and channels serving ocean-going vessels. We consider that the overall benefits to the nation which result from channel and harbor dredging at ports are so considerable, in terms of facilitating exports, imports, and job development, that it is fully appropriate to fund these dredging activities out of general revenues. In this regard, we note that, according to the Department of Commerce's Survey of Current Business, the value of goods and services in U.S. export and import commerce in 1982 constituted 22.3% of G.N.P. Indeed, in our view, it is because port development is so tied to the economy of the nation as a whole (as opposed to any particular area) that general tax revenues have, to this time, been the source of funding for dredging projects.

Further, as this Subcommittee is aware from voluminous testimony submitted in the last Congress, many large financial commitments have been made at various ports, both by local authorities and private parties, on the assumption that the Federal government would continue its historic practice of 100% funding of these port dredging projects.

By objecting to user fees generally, however, liner carriers do not mean to imply support for all aspects of the status quo concerning port development. We support "fast-tracking" of port development projects, recognizing that delays in project implementation greatly increase project costs and that, when delays are combined with high interest rates, taxpayers get less port development per dollar.

Similarly, we do not oppose the concept of Federal/local cost sharing for port development if such is needed to increase the total amount of port dredging undertaken. Greater funding by local governments for port projects (out of general local revenues), combined with general Federal funding, would increase the total revenues available for port dredging projects (assuming no further reduction in general Federal funding).

However, we recognize that the Administration has been urging the adoption of port user fee legislation under which ocean carriers would pay, at least in part, for the dredging of ports serving ocean carriers and that various bills have been introduced (S. 970, S. 865, and H.R. 1512) which would either impose Federal port user fees, authorize local governments to impose user fees, or both. Therefore, in light of the consideration being given in the Congress to port user fee legislation, we take this opportunity to go beyond our general opposition to port user fees and set forth our views as to how port user fees (should the Congress choose to impose or authorize them) might be made less objectionable, or at least not completely unfair, to liner carriers.

III. Any Port User Fee Legislation Should Be True to the Concept of A "User" Fee; By Contrast, Ad Valorem Fees Are Not True User Fees, But Rather A System For Subsidy of Bulk Carriers By Liner Carriers

If liner carriers are to pay user fees to support dredging projects at ports, our primary concern is that they be required to pay fees only for dredging services required by liner carriers.

It is significant that most of the Congressional hearings held in recent years on port development issues have focused on the desirability of developing ports to depths of up to 55 feet, depths adequate to accommodate a new generation of coal colliers greater than Panamax size. By contrast, liner carriers and their customers are simply not in need of such port deepening projects. We are aware of no liner carrier vessel, present or planned, which draws as much as 40 feet or even 37½ feet of water when loaded. The larger, more modern liner vessels presently in use draw approximately 30 feet of water when loaded; many liner vessels presently in use draw even less water. Thus, liner vessels are already able to utilize a great many U.S. ports, as presently dredged.

Since liner vessels do not draw as much as 40 feet of water, they should not be required to pay any fees associated with dredging to depths greater than forty feet. If any port "user fee" system is to be worthy of the name, under that system large bulk commodity carrier vessels--the only ones in need of over 40 feet of draft--should be the only class of vessels required to pay user fees toward the incremental cost of dredging channels to 40 plus foot depths.

We realize that a proposal to require such bulk carrier vessels to pay the entire incremental cost of dredging beyond forty feet may not encourage coal exports, and we understand promotion of coal exports to be a major concern of many members of Congress involved in port legislation. However, if as a matter of trade policy, or energy policy, or other national policy, the Federal government (or state or local governments in coal producing states) determines that coal exports should be promoted, and further determines that, as part of a promotional effort, bulk coal carriers should not be required to pay 100% of the incremental cost of dredging needed only by such carriers, we nonetheless see no reason why such a promotional policy must be, or should be, pursued by taxing liner carriers for services (deepening of ports beyond 40 feet) which are of absolutely no value to liner carriers. Such an approach simply calls for liner carriers and their customers to, in effect, provide a subsidy to bulk carriers which the general taxpayers are unwilling to pay. Thus, we urge those concerned with coal exports to focus on other means of promoting their overall objective.

Accordingly, we are unalterably opposed to the concept of port user fees based on the value of cargo on a ship, such as would be imposed under S. 865. The value of cargo has no causal relation to the demand that a vessel places on a port with respect to channel or harbor depth. Thus, adoption of a scheme of port "user" fees which does not have any such causal relationship would result in a subsidization of bulk carriers by liner carriers.

To expand further on our strong opposition to ad valorem fees, we note that liner carrier cargo, whether containerized or break bulk, consists in very large part of finished and semifinished goods with per ton values many times that of bulk commodities. For example, we have estimated that liner cargo crossing the Atlantic (generally containerized cargo) in the U.S.-European trades has an average value of $3,500-$4,000 per ton. In contrast, we understand the price of a ton of coal to be approximately $40. An ad valorem port user fee would thus tax a liner carrier nearly one hundred times as heavily as a bulk coal carrier on a per ton basis. Clearly, the burden of any port "user" fee based on value of cargo would therefore fall very heavily and disproportionately on liner carriers and their customers.

Moreover, to the extent that revenues from these fees are used for capital or maintenance projects to dredge ports to depths of 40 feet or more (depths not needed by liner vessels) the liner carrier subsidy of bulk carriers would be even more extensive and unfair, as liner carriers would derive no benefit from projects for which they have been so heavily taxed.

In addition, we believe it important for the Congress to keep in mind that although liner carriers would be the group most directly and severely affected by ad valorem user fees, there are a great many other interests that would be adversely affected. Virtually every segment of the American economy is either a direct or indirect customer of liner carrier services, and a user fee system that unfairly and disproportionately taxes liner carriers would tend to have an unfair, though perhaps less direct, impact on the consumers of liner services. For example, to the extent costs of port user fees are passed on by liner carriers, the competitiveness of American exporters in overseas markets will be reduced. Further, the cost of imported products on the shelves of our stores will go up, affecting millions of American consumers. Indeed, in view of the fact that so many segments of the public could be affected by the imposition of fees on liner carriers, this not only supports our particular opposition to ad valorem user fees, but our general opposition to port user fees.

In view of these undesirable consequences, it is not surprising that ad valorem user fees have not been used in other countries (at least the liner carriers we are representing today have advised us that they are not aware of any other nation in the world which imposes ad valorem fees on vessel operators to support port dredging).

For these reasons we believe that any port user fee legislation should not only not include, but should explicitly prohibit the imposition of ad valorem port user fees, at either the Federal or local level.

While the notion of port user fees based on cargo tonnage is less objectionable to us than ad valorem user fees, we are nonetheless concerned that a fee system based on cargo tonnage could result in subsidy of bulk carriers by liner carriers if a meaningful portion of cargo tonnage user fees were dedicated to capital and maintenance dredging to depths in excess of 40 feet. Thus, in our view, even a port user fee system based on cargo tonnage should be modified to ensure that large bulk carrier vessels are not subsidized by liner carriers. Indeed, absent such a modification, it would not be a true "user fee" system.

We recognize that it is probably impossible to legislate a fee system that would perfectly reflect the exact level of demand which each vessel places on the need for harbor dredging. However, one way in which a cargo tonnage fee system might be modified to better reflect that goal would be to establish, as a condition to dedication of any revenues collected from port user fees to capital or maintenance projects for dredging to depths greater than 40 feet, that a stated (and high) percentage of user fee revenues dedicated to such projects be derived from operators of vessels drawing greater than forty feet of water. We note that this result is partially achieved under S. 970 because the Federal user fees imposed under Title I of that bill are dedicated to maintenance of existing depths, which are not generally in excess of 40 feet. However, we note that similar protection does not appear to be offered under section 301 of that bill, with respect to local fees related to capital projects. Another means of modifying a cargo tonnage based user fee system to better ensure that liner carrier derived port user fee revenues would not be dedicated, in whole or large part, to projects needed only by large bulk carrier vessels would be for a fee system to include a significant surcharge on vessels drawing over 40 feet.

IV. No Federal Fee Should Be Imposed; Legislation Should Only Authorize (But Not Require) The Imposition of Fees By Local Ports

A. A System of Local Fees Would Better Reflect The Concept Of "User" Fees

The foregoing section of this statement explains how a user fee system--whether Federal or local--could be tailored to more accurately reflect true "use" of port depths and avert the totally unfair result of taxing liner carriers for dredging services needed only by large bulk carrier vessels. We turn now to the reasons why, as between a system of Federal fees and a system which authorizes the imposition of local port user fees, liner carriers would have less objection to a local system.

Liner carriers strongly believe that, to the extent the Federal government determines that some portion of the costs of port dredging must be paid for by sources other than general Federal revenues, the Congress should supplement Federal revenues by requiring partial funding of projects by states and localities, not by imposing Federal fees on private parties.

Furthermore, while Federal legislation may authorize local fees, it should not require that the state or local funding be derived from port user fees. The appropriate state or local governmental entity should make its own determination as to whether, in the interest of promoting its port, it would raise the non-Federal share of project costs through general revenues or instead impose fees on port users. Thus, if a port's local government used general revenues for port dredging projects, no port user fee would result, but the Federal government's budgetary concern--that it no longer bear the full cost of these projects--would be met.

Under such a statutory scheme, if the local governmental authorities consider that a port dredging project is not so worthy as to deserve full support from general revenues, but must be supported, at least in part, by port users, the decision by a port to have a project go forward would be subject to marketplace restraints. Specifically, if there is no demand by a class of port users for deepening a channel to a certain depth, or maintaining that depth, if the local port decides to impose fees on that class of port users in connection with such a project, the port would risk a loss of patronage by those users. Thus, if a user fee at a port would be such as to reduce liner carrier patronage there, the vessels no longer calling at that port would not have to pay a fee at all--a result which we consider to perfectly reflect the notion of "user" fees.

Such marketplace pressures would ensure that any extra revenues for port development which may result from user fee legislation would not result in the port system being overbuilt, at least from the liner carrier viewpoint. And, in these times of budgetary restraint, we think it highly appropriate for any port legislation to be structured in such a way as to ensure that projects to be undertaken are truly supported by port users.

B. Relation Of A Local Fee System To The National Highway System And The Container Revolution In Liner Shipping

We believe that the matter of ensuring that investments in the port system are justified by demand is related to another important subject area in which the Committee on Environment and Public Works (and the House Committee on Public Works and Transportation) has done so much work through the years--and that area is in the development of our national highway system.

Since 1956, when the Congress enacted legislation establishing the Interstate Highway System, tremendous improvements have been made in the system of major roads connecting port cities with inland cities, factories, and other business destinations. The transit time for trucks carrying ocean freight between ports and inland points has been drastically reduced.

Moreover, these highway improvements have coincided with the "container revolution" in the liner carrier industry. As this

Committee may know, since the late 1950's (almost precisely the same time that the Congress upgraded its commitment to the highway program) liner carriers have made a massive capital investment in containers and new vessels equipped to carry containers. The ocean carriage of goods by container, rather than by "break bulk" methods, has drastically reduced the time needed for the handling of cargo within ports.

The result of increased investment in roads and in container equipment has been to so reduce non-ocean transit times associated with ocean cargo movements as to reduce a shipper's dependence on the geographically nearest port. Shippers of general cargo are increasingly able to choose port gateways other than the nearest port and frequently do so on the basis of cost and overall transit time considerations. Thus, we believe that the consequences of these highway and container investments complement, indeed facilitate, the operation of the marketplace forces which would restrain local ports from imposing fees on classes of port users in conjunction with projects not supported by those port users.

Thus, from a budgetary and taxing viewpoint, it appears that significant capital investments of two kinds (highway and container) which have already been made (and are continuing to be made) have produced an indirect benefit by reducing the national need for capital expenditures for dredging of general cargo ports. And, the less need for such dredging, the less need for "user" fees on liner carriers to support those projects.

In short, we wish to make clear that, from the viewpoint of liner carriers, we could make due with fewer ports and still very adequately serve the public. While we are certainly not asking for less port development, if the price of more port development is "user" fees on liner carriers, we think it is unnecessary and are opposed to it.

V. Legislation Should Impose Limits on Local Fee Authority; Ad Valorem Fees Would Impose A Paperwork And Administrative Burden

To the extent that the Congress does enact legislation authorizing localities to impose port user fees, such legislation should impose clear and firm limits on the form such local fees can take.

As mentioned earlier, localities should be absolutely prohibited from imposing fees based on the value of cargo. Also as mentioned above, a statute authorizing a port by port user fee system should not allow local fees derived from liner carriers to be dedicated solely or predominantly for very deep draft projects (beyond 40 feet) not required by liner carriers or their customers.

In addition, very tight restrictions on the format of local fees should be Federally imposed, either by statute or by regulation. Without such strong Federal preemption in this area (which is completely warranted given the international nature of the shipping business) ocean carriers would likely be subjected to paperwork, administrative, and recordkeeping requirements that would vary from port to port. Such variance alone would constitute, in our view, an unwarranted burden on international commerce.

Moreover, with regard to paperwork and administrative matters, we note that a system of port user fees which requires recordkeeping as to the value of cargoes will be costly and time consuming for carriers. At present, carriers do not generally keep records as to the value of cargo in their vessels. Customs declarations, which concern value of cargo, are the concern of the shipper. Ad valorem schemes will thus require carriers to develop new recordkeeping systems. Further, the carriers will have to rely on shippers for information as to value of cargo, and the exchange of this information between carrier and shipper will impose an administrative burden on both. This may prove burdensome to the government as well, as these shipper/carrier records would have to be reviewed by government personnel as part of the administration of any ad valorem fee system.

VI. Additional Points

A. Any Federal Fees Should Be Subject To Upward Revision Only Via The Legislative Process

While we have emphasized that liner carriers would find legislation authorizing local port user fees to be less objectionable than imposition of a Federal user fee, we have an additional concern with proposals which would establish a Federal fee system. We believe that maximum national fees should be established only by the Congress. Thus, we oppose any grant of authority to any administrative agency to increase the level of a national user fee. Increases in Federal user fees should be imposed only if they are so meritorious as to survive the legislative process.

In this regard, we specifically object to the authority to make upward adjustments in fees that would be conferred on the Corps of Engineers by section 103 of S. 970. Similarly, we have read in the Congressional Record that the sponsors of S. 865 contemplate that, under that bill, fees would be established initially at levels approximately one half of the maximum authorized to be established. We believe that if only one half of the fee levels to be authorized are in fact required, the maximum fee levels in that bill should be reduced by one half, with any increases subject to legislative approval.

B. Any Fees Should Be Phased In Gradually, And To A Level Less Than 100% Cost Recovery

We commend the sponsors of S. 970 and S. 865 for recognizing that if port user fee legislation is to be enacted it should provide for a gradual phase in of such fees, not for a large one time increase. We also wish to emphasize that, consistent with our general opposition to user fees, we are strongly opposed to the idea of 100% cost recovery of port dredging from user fees. Even after a phase in of any fees, the maximum fee should constitute far less than 100% cost recovery, in recognition of the general benefits to the nation which stem from such projects.

C. Tariff Concerns Regarding Ad Valorem Fees

Ad valorem port user fees, as they are not true "user" fees, appear to be very much akin to a tariff. As such, it may be that such a system of fees may raise serious questions concerning international tariff agreements to which the United States is a party. We believe such questions should be very carefully examined by the Congress before action is taken on port user fee legislation.

VII. Summary and Conclusion

In summary, liner carriers are opposed to the imposition of port user fees and feel strongly that port dredging projects should continue to be funded from general revenues.

However, we have tried to present a detailed statement to the Subcommittee today in order to make clear that, while we find all port user fee proposals to be objectionable, some of those proposals are far more objectionable to liner carriers than others. In this regard, we strongly urge that, if the Congreee should, despite our general objections, choose to enact port user fee legislation, the Congress should reject the notion of ad valorem user fees and also reject a Federal fee system in favor of a system which authorizes, but does not require, local fees.

In closing, we thank the Subcommittee for the opportunity to present this statement. At this time we would be pleased to respond to any questions the Subcommittee may have.

UNITED STATES SENATE SUBCOMMITTEE ON WATER RESOURCES

HEARING STATEMENT ON

PORT USER FEES

Submitted by: EDWARD J. RUTKOWSKI, County Executive
Erie County, New York

Date: June 21, 1983

Submitted to: United States Senate Subcommittee on Water Resources

Thank you for this opportunity to present Erie County's position on user fees for the maintenance and development of our nation's ports. Erie County is concerned about the effects which such user fees would have upon the Great Lakes economy and in particular on the Port of Buffalo. This Port contributes over $10 million a year to Erie County's economy, and port improvement studies are underway which could expand this economic benefit to $20 million a year. Therefore, Erie County is justifiably concerned that any user fees under consideration by the Senate Water Resources Subcommittee do not adversely impact upon the viability of the Great Lakes ports and shipping industry.

Erie County cannot support any form of port user fees without suffering serious economic consequences. Port-specific or nationally uniform fees would put Buffalo in a noncompetitive position in relation to both the nation's major seaports and Canadian ports.

The Niagara Frontier Transportation Authority, has estimated that the port-specific user fees necessary to recover operations and maintenance costs for the Port of Buffalo in 1977 would have amounted to thirty-three cents per ton of cargo. In contrast, the user fees for the Port of New York would only have been seven cents per ton. Such a large disparity will cause the loss of shipping business to the Port of New York, Canadian ports, or alternative transportation modes such as truck and railroad. This will essentially cause the elimination of the Port of Buffalo as an economic resource for the Buffalo area.

Nationally uniform fees would also place the Port of Buffalo in a noncompetitive position. For example, the location of the Buffalo and other Great Lakes ports in relation to Canada creates a competitive situation not directly experienced by other large seaports. Any additional fees imposed in the United States, even if uniform, could cause the loss of shipping to nearby Canadian cities. The Federal user fee proposals do not adequately address this concern regarding international competition. Furthermore, user fees would be an added cost to Great Lakes shippers who already pay a user fee in the form of tolls on the St. Lawrence Seaway System. This would again weaken the competitive position of Great Lakes ports. Any user fee proposal which is not linked to the elimination of St. Lawrence Seaway tolls will adversely affect the economic climate in the Great Lakes Basin.

Consideration must also be given to the fact that Great Lakes ports are less independent of each other than are the national seaports. Shippers using the "system" of Great Lakes ports and the St. Lawrence Seaway could pay user fees amounting to three or more times the user fees charged outside of the Great Lakes. This is because any cargo shipped through the Great Lakes often involves the use of several ports and the Seaway. A hypothetical shipment of cargo into the Great Lakes under a user fee system provides a useful example of this problem. The shipper's first fee would be the Seaway tolls, followed by a user fee at the Great Lakes port point-of-entry. If cargo is then shipped on to other Great Lake ports, additional fees would be added on to the initial cost. This would create an extremely expensive situation for shippers and likely cause an eventual bypassing of regional ports such as Buffalo.

User fees, whether port-specific or nationally uniform, will clearly have a damaging effect on the Port of Buffalo and other Great Lakes ports. Because of the negative economic impact such fees will have throughout the Great Lakes Basin, I would like to recommend that no further action be taken on user fees until extensive research is undertaken regarding this issue. Additional research must give serious consideration to the continuation of 100% federal financing for constructing and maintaining navigation related improvements at our ports. According to the study on Port Development in New York State prepared by New York State Senator Manfred Ohrenstein in 1982, the nation's ports generate $11 billion annually in custom duties and taxes which go directly into the Federal treasury, while the Federal government's average annual investment for ports is only $1.6 billion. This alone justifies the continuation of 100% Federal financing. Furthermore, the establishment of a dedicated fund from port generated revenue that would be earmarked for port maintenance and construction should be considered as an alternative to establishing a new layer of user fees on our Country's ports.

I appreciate this opportunity to present Erie County's position on the port user fee issue.

Thank you.

INLAND RIVERS PORTS & TERMINALS, INC.
P.O. Box 863 Central Station • (314) 241-7354
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STATEMENT June 1983

FOR PRESENTATION BEFORE

U. S. SENATE SUBCOMMITTEE ON WATER RESOURCES

Mr. Chairman, Members of the Subcommittee, my name is Milton Barschdorf. I am currently serving as Chairman of the Board, Inland Rivers Ports & Terminals, Inc., a non-profit organization composed of port authorities and river terminal operators located on the nation's shallow draft inland waterways systems serving directly some of the most highly productive agricultural and industrial complexes of the United States.

Our membership and all those impacted by the healthy growth of business throughout the shallow draft inland waterways systems are vitally concerned over the outcome of user fee legislation scheduled for hearings before Congress.

Although this hearing on June 21st is scheduled as one to address the deep-draft port and waterway user fee issue, including consideration of Senate Bills 865 and 970, it is our understanding that testimony to be presented by the Secretary of Transportation, Mrs. Elizabeth Dole, and Assistant Secretary of the Army, Mr. William R. Gianelli, might very well include a discussion of the Administration's bill on inland waterway user fees.

In either case, we are deeply concerned, for whatever legislation is passed regarding deep draft user fees, the precedent set will most likely be similarly applied in principle to the shallow draft inland waterways.

Most persons not thoroughly familiar with the role of our nation's ports have the impression that, with the exception of the differences in depth, they are all one and the same from the standpoint of cargo movements and viability.

Nothing could be further from the truth.

The primary function of the deep water port is the development of the export/import trade via deep draft ocean going vessels. The cargo movements in support of this trade move to and from interior points by truck, rail and the shallow draft inland waterways.

Should any one of these three inland transportation distribution modes fail or fluctuate in service the deep water port can depend upon the other competing modes to breach the gap and keep shipments moving via the deep draft vessels in world trade. The additional transportation costs are charged to the shipper and ultimately to the consumer and taxpayer.

The shallow draft inland waterway ports, numbering well over 180 on the other hand, are dependent entirely upon the viability of a single mode, the inland waterways, and the towboat industry which moves the cargo. Should that one mode fail or deteriorate the entire inland port system will likewise fail or deteriorate.

Also drastically affected are the industrial and agricultural complexes whose economic survival also depends upon the healthy condition of the inland waterway mode. The industrial development aspect of this alone represents capital investments exceeding $203 billion.

All transportation modes are vital to our nation's economy and it follows that the most economic, efficient, and energy conserving intermodal system is one which provides for the maximum utilization of transportation by water to a point as close as possible to the receiver, utilizing rail and truck to complete the remainder of the movement normally within the shorter ranges of haul where these modes are most efficient.

Due to the highly competitive nature of the transportation modes, Federal subsidies and Federal taxes, in whatever form, play a most crucial role in establishing a comparable base from which to measure the true cost of services and capability to compete.

As an example, taking FY 1980 figures, Federal subsidies to the inland waterways amounted to approximately $282 million while Federal subsidies to the railroads were approximately $2.4 billion. Reduced to ton-miles, this is .09 cents/ton mile to inland waterways and .27 cents/ton-mile to the railroads - a three-fold financial advantage to rail.

Compounding this three-fold advantage is the Administration's proposal to further tax the inland waterways to recover from 70 to 100% of the Federal subsidies in addition to the fuel tax already imposed while remaining silent in the matter of recovery of the much higher subsidies continuing to be given to the railroads.

Such gross disparity of treatment results in an artificial boost in all transportation costs, which are passed on to the shipper who adds it on to his bill and finally, the unfortunate consumer and taxpayer picks up the tab.

In the mean time, the most efficient mode, the inland waterways, is forced into a less competitive position thus creating a diversion of cargo to the railroads.

Deregulation of the railroads under the provisions of the Staggers Act adds further to this disparity.

There is certainly no arguing the basic premise of the Administration that the "beneficiaries should pay" providing the beneficiaries are clearly delineated and treated fairly and equitably in the matter of allocation of subsidies and provisions for pay-back.

It should also be noted that one of the greatest beneficiaries of the services performed by the transportation modes comes in the form of custom's receipts totaling some $10 billion or more each year. Surely a goodly portion of this should be allocated each year to the transportation modes in proportion to their participation in the movement of the import cargo generating these customs receipts.

Before any user charges or taxes are placed upon any mode, a comparable financial operating base should be determined for all competing modes and financial credit be given for each mode's contribution in the form of cash customs receipts and enhancement to the national security. User charges and taxes may then be assessed to recover such differences that might exist between these benefits to the Federal government and the subsidies provided by the Federal government.

Taxes in excess of this which can be justified in order to meet Federal deficits may then be applied across the board to all modes in a fair and equitable manner without destroying the competitive advantages of each mode and the overall efficiency of the nation's transportation system.

Mr. Chairman, Members of the Subcommittee, we most respectfully ask your careful consideration of the matters brought forth in this presentation and urge your support in providing our nation with the most efficient transportation system possible thereby enhancing not only the domestic economy but also our competitive edge in world markets.

This opportunity to appear before you is deeply appreciated.

Thank you, very much.

Milton P. Barschdorf
Milton P. Barschdorf
Chairman of the Board

Mississippi State Port Authority at Gulfport

May 6, 1983

Senator Mark O. Hatfield	Congressman Robert T. Matsui
Senator Robert C. Byrd	Congressman G. William Whitehurst
Senator John W. Warner	Congressman Herbert H. Bateman
Senator Strom Thurmond	Congresswoman Lindy Boggs
Senator Mack Mattingly	Congressman Walter B. Jones

Dear Friends:

This is to acknowledge and thank you for your letter of April 22 with reference to Bills, S. 865 and H.R. 2406, which Bills treat with the maintenance and development of ports serving ocean-going traffic which you have jointly introduced in the U. S. Senate and House of Representatives. Your communication is most opportune as I have just recently completed an analysis of the legislation for the consideration of our Mississippi Congressional Delegation, the American Association of Port Authorities, the Gulf Ports Association and the U. S. Port System Advocates. I attach hereto a copy for your consideration.

It is my opinion that S. 865, (and the MATSUI/BOGGS House Companion Bill), must be considered in the perspective of providing an instrument for the achievement of a substantial degree of unity among the various U. S. ports. In the attached analysis, I have attempted to emphasize the Bill's strengths and weaknesses and, provided desirable amendments can be achieved, the Bill could probably provide the best legislation for port interests which has a chance of enactment. The qualified endorsement by OMB indicates substantial Administration support. We, of course, oppose the imposition of any user fees in principle, but in today's world such fees appear inevitable. I therefore recommend favorable consideration of this legislation if there is no better alternative available and with the understanding that appropriate amendments improving the legislation can be obtained.

I personally prefer a proportionate increase in the present U. S. vessel tonnage tax as the most practicable funding approach, as this user fee has been in effect since 1790 and has been defined as a "charge upon a vessel according to its tonnage as an instrument of commerce for the privilege of entering or leaving a port or navigating the public waters of the country". This obviously is a user tax and, by historical background and practice, is not in conflict with Constitutional restrictions or GATT. There would need to be uniform application to vessels of all flags (some nations now enjoy reduced rates) and the cargo diversion aspects should be restricted by the provision of law which I have addressed in the attached analysis. Also, there should be provision for equitable consideration of cargo commodity values and volume.

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I am pleased to advise you that the Gulf Ports Association, representing both large and small ports, has given consideration to this analysis and a unanimous resolution was passed at the recent meeting of GPA held in Galveston, April 21-22. Mr. Richard Leach, President of the Gulf Ports Association, has accepted the responsibility for distributing the position of the GPA, and I am confident that each of you will receive copies. It was a pleasure to learn that Senator Thad Cochran of Mississippi has become a co-sponsor of S. 865, and that Congressman Trent Lott of Mississippi has become a co-sponsor of H. R. 2406, and they will propose constructive changes.

Thanking you for your constructive efforts on behalf of the nation's ports and, with all good wishes, we remain

Sincerely yours,

Clark

J. W. Clark
Executive Director

JWC:cb

Attachment

cc: Senator John C. Stennis Congressman Jamie L. Whitten
Senator Thad Cochran Congressman Webb Franklin
Congressman G. V. Montgomery Congressman Trent Lott
Congressman Wayne Dowdy

Mr. Richard P. Leach, President, Gulf Ports Association
Mr. William G. Simpson

Mississippi State Port Authority at Gulfport

March 28, 1983

The Honorable Thad Cochran
United States Senate
328 Russell Senate Office Building
Washington, D. C. 20510

Dear Senator Cochran:

On March 21, 1983 there was introduced in the Senate S. 865 -- Deep-Draft Navigation Act of 1983. While I am confident that you and members of your staff have already taken good notice of this Bill, it is opportune that we register our comment and recommendations on this proposed legislation. We are very grateful for the consideration and splendid support received last year in dealing with earlier "user fee" proposals.

It is our conviction that the proposed legislation, S. 865 -- Deep-Draft Navigation Act of 1983, is a positive step toward resolving past differences between large and small ports, and is a reasonable compromise with the past approach of the Administration to impose drastic user fee legislation which would have been extremely detrimental to smaller ports such as Gulfport. It is significant that S. 865 apparently is acceptable to the Administration, as indicated by the letter from Mr. David Stockman, which was inserted in the Congressional Record as a supporting document to S. 865.

The proposed legislation contains several of the provisions which we advocated last year and, _if_ we must have user fees then this legislation appears to be the most acceptable yet introduced. We certainly agree that the Bill is not a perfect instrument, but it sets a course which will enable all interested parties to use as the basis for registering their particular views and recommendations.

Following our own very careful review, we can now provide you with our comment concerning certain aspects which concern us:

1. Title III, Section 302 apparently does not provide for mandatory imposition by states either directly, or through Customs, of the proposed qualified State Vessel Tax on Cargoes Loaded. This should be mandatory to avoid possibility that some states may choose not to impose such taxes thereby affording their respective ports substantial advantages.

2. It is unclear whether coastal trade and non-contiguous trade will be subject to imposition of the proposed national uniform user fee either by Federal or State authority. Such trade should definitely be included to insure equitable treatment.

3. Title IV and Title V, specifically Section 501 (b)(3) should be amended to provide grandfather privileges for previously approved Corps of Engineers projects; i.e., following extensive hearings in 1978 the Corps of Engineers performed EIS and extensive hearing then formally approved a projected channel depth increase to 38 feet for Gulfport. On all such approved projects it would be unnecessarily burdensome, time consuming and costly to repeat same and therefore I strongly recommend the Section to be amended to provide for expeditious consideration without necessity of hearings, etc.

There are various other Sections which appear to be somewhat ambiguous or which need clarification, but which can probably be handled adequately during Senate and House hearings -- (we anticipate that a companion Bill will soon be introduced in the House). I hope to visit with you during the week of April 4 when I will be attending the American Association of Port Authorities meeting in Washington and I trust that we will then have a good opportunity to discuss the relative merits of this legislation. Our mutual friend, Bill Simpson, continues to work closely with me in this matter and he will be in contact with your office for the purpose of fixing an appointment. In the meantime, with all good wishes, we remain

Sincerely yours,

J. W. Clark
Executive Director

JWC:cb

cc: Commissioners
Mr. William G. Simpson
Mr. William T. Hackett, Jr.

STATEMENT OF THE
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA
SUBMITTED TO THE
SUBCOMMITTEE ON WATER RESOURCES
OF THE
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
RE: PORT DEVELOPMENT LEGISLATION
(S. 865 and S. 970)

June 30, 1983

Introduction

The Interstate Natural Gas Association of America (INGAA) is a national, non-profit trade association representing the interstate natural gas transmission industry. Our member companies transport natural gas through more than 200,000 miles of pipelines that connect areas of gas production to points of local distribution. INGAA member companies account for over ninety percent of the natural gas transported in interstate commerce.

INGAA is concerned that deep draft port development will require extensive relocation of natural gas pipelines at a cost of many millions of dollars. We believe it is fundamentally inequitable for domestic natural gas consumers to bear these relocation costs. We urge the Committee, as it develops legislation authorizing and promoting the development of deep draft ports, to provide that relocation costs are treated like other project costs. When it considered similar legislation during the 97th Congress (S. 1692) the Committee addressed this issue and adopted a reimbursement provision at that time. As the Committee takes up port development legislation in this Congress, we urge that reimbursement for pipeline relocations again be explicitly addressed in the legislation.

Comments Regarding S. 865 and S. 970

S. 865 (Sen. Moynihan) and S. 970 (Sen. Hatfield) would establish Federal policy regarding the funding of deep draft port development.

S. 865 provides that local authorities contribute 55% of the construction funds for projects to dredge to fifty-five feet. S. 970 provides for 75% local cost sharing for deep draft projects. These suggestions that local authorities should be responsible for a majority of project construction costs are a significant departure from traditional practice, when the Federal government has financed such projects.

INGAA is not opposed to the principle of port development, or legislation to facilitate port development. We believe that some of the projects under discussion could be beneficial to the nation. Similarly, our concern is not with the cost allocation formula between Federal and non-Federal agencies. Our sole concern is with the impact of the proposed legislation on customers of interstate natural gas pipeline companies.

Impact of Deep Draft Port Legislation on Interstate Natural Gas Pipelines

The pipeline facilities used to transport natural gas must cross various waterways (rivers, bays, canals, etc.) along their routes. These crossings are installed with the approval of the proper governmental agencies so as not to interfere with commercial traffic and normal maintenance dredging. Pipeline crossings comply with all applicable regulations, including any required burial depth for the pipelines. When planning a crossing, INGAA's member companies routinely consult with and seek the advice of the appropriate governmental agencies in regard to navigation improvement projects which are contemplated for the future. This is done precisely to avoid expensive relocations. Because of such careful planning, waterway projects have historically required few pipeline relocations.

At least two of the deep draft navigation projects under active consideration would require expensive relocations of natural gas pipelines — the New Orleans-Baton Rouge project and the New York Harbor project. To accommodate a fifty-five foot channel, the Corps would require relocation of pipelines to eighty feet. The crossings affected by these projects were installed during the 1950's and early 1960's, when neither industry nor government agencies foresaw the possibility of dredging river channels to such depths. It is our understanding that the equipment did not exist at the time these facilities were installed to dredge to the depths as would now be required. More recent crossings have been engineered at depths necessary to comply with such dredging projects.

The project to dredge the Mississippi River between New Orleans and Baton Rouge would necessitate the relocation of several pipelines. As the Subcommittee is aware, this part of the country is a major source of oil and gas production and the large concentration of pipelines crossing the Mississippi along this route is probably unequaled any place in the country. INGAA has identified at least nine interstate natural gas pipelines that would require relocation at an estimated cost of twenty-six million dollars. We would emphasize that this estimate is conservative. Depending on the engineering specifics of the project, additional pipelines could be affected and the cost of relocation could be significantly greater.

We are also concerned about possible relocations in the New York area. As can be well imagined, the New York metropolitan region is a major natural gas market and several pipelines cross waterways in the area. It is INGAA's understanding that present deep draft plans for that area would require relocation of two interstate natural gas transmission pipelines at a cost of approximately twenty million dollars. There also exist at least eight additional natural gas transmission pipelines in the harbor area, some or all of which could require relocation if plans for dredging were to be expanded. Relocation of these pipelines is estimated to cost up to seventy-three million dollars.

Although other possible dredging projects have not advanced to the point that definitive cost estimates can be made, INGAA's initial review indicates that deepening the ports of Philadelphia and Portland, Oregon, to fifty-five feet, for example, would necessitate relocations costing on the order of thirty and eleven million dollars, respectively. Also, projects located in Texas are likely to require costly pipeline relocations because of the large number of pipelines criss-crossing the state.

Unless specific provision for reimbursement is made in the deep draft legislation, natural gas consumers will be forced to bear the expensive pipeline relocation costs that the deep draft projects would entail. We believe that any legislation on the subject should include a provision for reimbursement of these costs. Ultimately, it is a matter of equity; natural gas consumers receive no direct benefit from these projects. Rather, the benefits accrue to specific users of the ports and to the nation as a whole. It makes no sense to require natural gas consumers to subsidize these major port expansions, when they receive no direct benefit from the expansion. In addition, there is no economic justification for treating pipeline relocation costs any differently from any other cost of port development.

Precedents for Utility Reimbursements

Congress has not hesitated to expressly provide for utility reimbursement in the case of extraordinary projects where Federal policy would clearly necessitate numerous relocations at substantial expense.

For example, in connection with the legislation authorizing the Tennessee-

Tombigbee Waterway, Congress explicitly recommended a division of utility relocation costs between Federal and non-Federal entities (H.R. Doc. No. 486, 79th Cong., 2nd Sess. 23 (1946)).

The River and Harbor Act of 1966 (P.L. 89-789, §207, 80 Stat. 1405, at 1423) provides for reimbursement for the relocation of gas transmission lines necessitated by a particular project on the Mississippi, and 33 U.S.C. §701q provides that the Corps can make utility reimbursements in the case of dam or reservoir projects. The Highway Act (23 U.S.C. §123) also contains specific reimbursement provisions. Similarly, Congress has often made reimbursement available in the case of bridge relocations or modifications necessitated by navigation projects. The Truman-Hobbs Bridge Act of 1940 (33 U.S.C. §§511-524) and the TVA legislation of 1933, as amended in 1968 (16 U.S.C. §831C-1(A))contain such provisions.

The Senate has just recently addressed the matter of utility relocations in conjunction with passage of S. 531, the Uniform Relocation Act Amendments. When the Uniform Relocation Act was enacted in 1970, the treatment of pipelines and utilities was not specifically addressed. Since that time, a body of experience and litigation has developed concerning the matter. In the process of considering amendments to the Act, the Senate Governmental Affairs Committee adopted a general policy permitting Federal funds to be made available for reimbursements when it is agreed that reimbursement is appropriate. In its discussion of this point the Committee noted that "...relocation is often not the choice of the utility and unreimbursed costs must be absorbed by the utility and ultimately, its ratepayers." The Committee also noted that "large-scale public projects can involve utility relocation in the millions of dollars, and result in considerable rate increases for utility ratepayers."

It was because port development legislation will have the precise impacts described above that this Committee, when it approved S. 1692 in 1981, adopted a provision assuring that gas consumers would not bear all of the relocation costs. In its report, the Committee stated that "since the utility owners receive no direct benefit from the harbor construction project, it appears to be unfair to require relocation totally at the owners' expense...."

Conclusion

In conclusion, INGAA urges that the Subcommittee, as it marks up the port development legislation, again address the issue of pipeline relocation. Just as this Subcommittee must re-evaluate the traditional practice of Federal funding for navigational project construction, we believe it is appropriate to re-evaluate the notion that utility ratepayers should be expected to bear millions of dollars in relocation costs when they receive no direct benefit from the project. We believe that, given the circumstances surrounding deep draft dredging proposals, it is both fair and equitable for the Subcommittee to establish relocation reimbursement as a matter of policy.

INGAA would be glad to furnish any additional information on the subject which the Subcommittee might desire and would be pleased to work with the staff to develop appropriate legislative language. I thank the Subcommittee for this opportunity to express our views.

Jerome J. McGrath, President
Interstate Natural Gas Association of America
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1660 L Street, N. W.
Washington, D. C. 20036
202/293-5770

II

98TH CONGRESS
1ST SESSION

S. 865

To establish a nationally uniform deep-draft vessel tax for the purpose of financing operations and maintenance of deep-draft commercial channels and harbors; to fund a percentage of new channel improvements; and to provide an expedited procedure for the authorization and permitting of navigation improvement projects and related landside facilities in deep-draft ports, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 1983

Mr. HATFIELD (for himself, Mr. BYRD, Mr. WARNER, Mr. THURMOND, Mr. MATTINGLY, Mr. FORD, Mr. TRIBLE, and Mr. RANDOLPH) introduced the following bill; which was read twice and referred jointly to the Committees on Finance and Environment and Public Works, by unanimous consent

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A BILL

To establish a nationally uniform deep-draft vessel tax for the purpose of financing operations and maintenance of deep-draft commercial channels and harbors; to fund a percentage of new channel improvements; and to provide an expedited procedure for the authorization and permitting of navigation improvement projects and related landside facilities in deep-draft ports, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Deep-Draft Navigation Act of 1983".

TITLE I—FINDINGS AND PURPOSES; DEFINITIONS

SEC. 101. (a) The Congress finds and declares that—

(1) it is in the national interest to develop and maintain a viable marine transportation system for the United States, including an integrated network of deep-draft commercial seaports adequate to accommodate the needs of foreign and domestic commerce, promote economic stability and provide for the national security of the United States and its allies;

(2) the current national system of deep-draft waterborne transportation has been accomplished through a productive partnership in which the Federal Government has developed and maintained the navigability of deep-draft channels and harbors and has thus facilitated maritime commerce, while States, port authorities and private commercial enterprises provided landside facilities and other improvements necessary to accommodate waterborne commerce, and that the continuation of such partnership is in the national interest;

(3) while each deep-draft port in the United States has its own concerns, problems and opportunities, which affect the flow of foreign and domestic commerce, it is in the public interest to treat each individual port as an integral component of a national port

system to facilitate the waterborne commerce of the Nation;

(4) ports in the United States are significant generators of national and regional revenue and customs receipts and are promoters of commerce which improves the United States' balance of trade, providing economic stability and growth; domestic and foreign shippers, producers, and consumers have been well served by the Nation's unified seaport system;

(5) there have been lengthy and costly delays in the authorization of, and the issuance of required Federal permits for, new deep-draft navigation improvement projects; there is a significant backlog of economically justified projects which, when constructed, will enhance the overall efficiency of the Nation's waterborne transportation system; and

(6) due to the general state of the Nation's economy and Federal budgetary restraints there is a need to more directly recover a portion of the Federal costs associated with the operation, maintenance, and improvement of deep-draft commercial channels and harbors.

(b) It is the purpose of this Act to—

(1) provide a national policy that recognizes the significant role and importance of waterborne commerce to the economic well-being of the United States;

(2) establish a procedure which facilitates the orderly authorization and funding of necessary maintenance, operation, and construction projects for deep-draft commercial channels and harbors and which provides consistency, predictability, and promptness in the issuance of required Federal permits with respect to such projects;

(3) promote the efficient movement of domestic and foreign waterborne commerce by providing the means to recover a portion of the costs of operation and maintenance of deep-draft commercial channels and harbors through the imposition of a nationally uniform tax upon the use of such channels and harbors by deep-draft commercial vessels, by establishing a trust fund to efficiently administer funds collected, and by maintaining a viable Federal, State, and industry partnership for the continued operation, maintenance, and improvement of deep-draft commercial channels and harbors, while also ensuring that such cost recovery and funding programs do not—of themselves—introduce any new elements creating competitive disadvantages among commercial seaports or impair the viability of any commodity or item of commerce in the world market; and

(4) integrate the operation, maintenance and improvement of the Saint Lawrence Seaway and Great Lakes ports into the nationally uniform system of financing deep-draft navigation improvement projects and deep-draft commercial channel and harbor operations and maintenance costs.

DEFINITIONS

SEC. 102. (a) For purposes of this Act—

(1) DEEP-DRAFT COMMERCIAL CHANNEL OR HARBOR.—The term "deep-draft commercial channel or harbor" shall mean any channel or harbor, or element thereof, with a depth exceeding twenty-four feet at mean low tide, which channel, harbor, or element is open to public navigation, and which is utilized in the transportation of commercial cargo in domestic or foreign waterborne commerce by means of deep-draft commercial vessels.

(2) ELIGIBLE DEEP-DRAFT COMMERCIAL CHANNEL OR HARBOR.—The term "eligible deep-draft commercial channel of harbor" means a deep-draft commercial channel or harbor located at, or adjacent to, any port which, when used by any deep-draft commercial vessel at any time during the fiscal year, subjects such vessels to a qualified State vessel tax, pursuant to section 302 of this Act.

(3) DEEP-DRAFT COMMERCIAL VESSEL.—The term "deep-draft commercial vessel" has the meaning given to such term by section 4237(2) of the Internal Revenue Code of 1954.

(4) QUALIFIED STATE VESSEL TAX.—The term "qualified State vessel tax" has the meaning given to such term by section 302 of this Act.

(5) DEEP-DRAFT NAVIGATION IMPROVEMENT PROJECT.—The term "deep-draft navigation improvement project" shall mean the dredging or other construction required to deepen, widen, or otherwise improve an eligible deep-draft commercial channel or harbor, or any element thereof, to a depth or width greater than the greatest depth or width actually maintained during the five-year period immediately preceeding the enactment of this Act.

(6) ELIGIBILE DEEP-DRAFT NAVIGATION IMPROVEMENT PROJECT.—The term "eligible deep-draft navigation improvement project" shall mean a deep-draft navigation improvement project authorized by Congress under section 502 of this Act.

(7) ELIGIBLE OPERATIONS AND MAINTENANCE.—

(A) IN GENERAL.—The term "eligible operations and maintenance" shall mean all dredging or other mechanical functions necessary to maintain the depth and width of any eligible deep-draft commercial channel or harbor, including any eligible deep-draft commercial channels or harbors located within the Great Lakes, at the lesser of—

(i) the depth or width authorized by Congress for such channel or harbor or any element(s) thereof; or

(ii) the depth or width actually maintained for such channel or harbor; or

(iii) the depth or width which the United States Army Corps of Engineers has agreed to maintain for such channel or harbor pursuant to a memorandum of agreement entered into in accordance with subsection (a) of section 402 of this Act.

(B) SAINT LAWRENCE SEAWAY.—As applied to the Saint Lawrence Seaway and any Great Lakes navigation improvement, the term "eligible operations and maintenance" shall include all operations, maintenance, repair, and rehabilitation, including maintenance dredging, reasonably necessary to keep such seaway or navigation improvements operated or maintained by the Saint Lawrence Seaway Development Corporation or the United States in operation and reasonable state of repair during such times as they may be in actual operation upon the date of enactment of this Act.

(8) GREAT LAKES NAVIGATION IMPROVEMENT.—The term "Great Lakes navigation improvement" shall mean any lock, channel, harbor or navigational facility located in the Great Lakes of the United States or their connecting waterways, including, but not limited to, the Detroit River, Saint Clair River, Lake Saint Clair, and the Saint Marys River, but shall not include the Saint Lawrence Seaway.

(9) FISCAL YEAR.—The term "fiscal year" means the one-year period beginning on October 1 of each calendar year. The term "Federal share" shall mean the percentage of the project cost of a deep-draft navigation improvement payable by the United States out of the navigation improvement account of the National Port System Trust Fund established under subsection 201(a)(1) of this Act.

(11) LOCAL SHARE.—The term "local share" shall mean the percentage of the project cost of a deep-draft navigation improvement project payable by the port authority or authorities sponsoring the project

under a memorandum of agreement entered into in accordance with section 401(a) of this Act.

(12) LANDSIDE FACILITIES.—The term "landside facilities" shall mean facilities for the transfer, handling or storage of commercial cargo at the point of transfer between deep-draft waterborne transportation and land or shallow-draft waterborne transportation.

(13) NOMINAL DEPTH.—The term "nominal depth" shall mean, in relation to the stated depth for any deep-draft navigation improvement project, such depth, including any greater depths which must be maintained for any channel or harbor or element(s) thereof included within such project in order to ensure the safe passage at mean low tide of any vessel requiring the stated depth.

(14) PERSON.—The term "person" shall mean a natural person, partnership, corporation, or other entity organized for the transaction of business for profit, and any government or governmental unit or agency thereof engaged in waterborne commerce, other than the governments of the United States, Canada, a State, a political subdivision of a State, or any agency thereof, but shall not include a public or quasi-public corporation or other entity operating under a charter from or under the authority of the United States, Canada, a

State, a political subdivision of a State, or an interstate authority, agreement, or compact.

(15) PORT.—The term "port" shall mean any place located on or adjacent to a deep-draft channel or harbor and having facilities for the loading or unloading of commercial cargo onto or from a deep-draft commercial vessel, including a commercial vessel used in the transhipment of commercial cargo between a deep-draft commercial vessel and a port.

(16) PORT AUTHORITY.—The term "port authority" shall mean—

(A) a State;

(B) a political subdivision of a State; or

(C) any authority established for the purpose of operating, promoting, developing, or managing landside facilities at a port or ports under an interstate compact or under a law or ordinance of, or charter issued by, a State or politicial subdivision thereof; and

(D) any individual or other nongovernmental entity engaged in the operation of a deep-draft channel or harbor for the commercial waterborne transportation of items or units of cargo by means of vessels with a draft exceeding fourteen feet.

(17) PROJECT COST.—The term "project cost" or "total project cost" shall mean all essential costs associated with the construction of a deep-draft navigation improvement, including, but not limited to, the cost of dredging or other mechanical functions, dredge spoil disposal, diking, and acquisition of any necessary lands, easements or rights of way.

(18) STANDARD COASTAL AND GREAT LAKES RANGES.—The term "standard coastal and Great Lakes ranges" and mean those twenty-two coastal areas designated as such in the Corps of Engineers, Institute of Water Resources, National Waterway Study.

(19) STATE.—The term "State" shall mean any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States exercises jurisdiction.

(2) UNITED STATES.—The term "United States" shall mean all areas included within the territorial boundaries of the United States, including the several States of the United States, the District of Columbia,

the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States exercises jurisdiction.

TITLE II—CREATION OF TRUST FUND TO ADMINISTER ACCOUNTS FOR OPERATIONS AND MAINTENANCE, IMPROVEMENT PROJECTS, AND LOCAL-SHARE CREDITS

SEC. 201. (a)(1) Notwithstanding any other provision of law, there is established in the Treasury of the United States a trust fund to be known as the Deep-Draft Navigation Trust Fund (hereinafter referred to as the "Trust Fund") consisting of three individual accounts as follows—

(A) the Operations and Maintenance Account;

(B) the Navigation Improvement Account; and

(C) the Special Credit Account.

(2) The Trust Fund shall remain available without fiscal year limitation and the amounts therein may be used only as provided in this section.

(3) The Secretary of the Treasury shall be the trustee of the Trust Fund and shall report to Congress not later than March 1 of each year, on the operation and status of the Trust Fund during the preceeding fiscal year and on the

expected operation and status of the Trust Fund during the three fiscal years immediately following such fiscal year.

Operations and Maintenance Account

(b)(1) The Operations and Maintenance Account of the Trust Fund shall consist of the amounts transferred to such account under paragraph (2), and any other amounts as Congress may from time to time appropriate to such account. Funds in such account may only be used for appropriations and payments authorized under paragraph (3) of this subsection and for the provision of credits allowed under paragraph (3) of subsection (d) of this section.

(2) The Secretary of the Treasury shall transfer each month from the general fund of the Treasury of the United States to the Operations and Maintenance Account of the Trust Fund an amount equal to the sum of—

(A) the amounts received into such general fund during the preceding month from—

(i) the taxes imposed by sections 4231, 4232, and 4233 of the Internal Revenue Code of 1954, and

(ii) the qualified State vessel taxes imposed by the States, and

(B) such amounts as shall be remitted to the Treasury of the United States during the preceding month by the Saint Lawrence Seaway Development

Corporation pursuant to section 13(b) of the Act of May 13, 1954 (68 Stat. 92), as amended by this Act.

(3) Not later than October 1 of each year, the Secretary of the Army shall transmit to the Secretary of the Treasury an estimate of the total cost of all eligible operations and maintenance for such fiscal year.

(4)(A) There are authorized to be appropriated out of the Operations and Maintenance Account of the Trust Fund for each fiscal year such sums as may be necessary to pay—

(i) 100 per centum of the eligible operations and maintenance costs of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation for such fiscal year; and

(ii) 40 per centum of the eligible operations and maintenance costs of—

(I) all eligible deep-draft commercial channels and harbors within the United States; and

(II) all Great Lakes navigation improvements operated or maintained by the United States.

(B) For the purpose of applying subparagraph (A)(ii) with respect to the fiscal year beginning October 1, 1983, "20 per centum" shall be substituted for "40 per centum".

(C) For the purpose of applying subparagraph (A)(ii) with respect to the fiscal year beginning on October 1, 1984, "30 per centum" shall be substituted for "40 per centum".

Navigation Improvement Account

(c)(1) The Navigation Improvement Account of the Trust Fund shall consist of the amounts transferred to such account by the Secretary of the Treasury under paragraph (2) of this subsection and paragraphs (4) and (5) of subsection (d), and such other amounts as Congress may from time to time appropriate to such account.

(2) Not later than October 31 of each year, the Secretary of the Treasury shall transfer from the general fund of the Treasury of the United States to the Navigation Improvement Account of the Trust Fund that portion of all amounts received into such general fund from the tariffs imposed under the Tariff Schedules of the United States which is equal to 85 per centum of such amounts as are authorized to be transferred by the Secretary to the Operations and Maintenance Account of the Trust Fund under subsection (b)(2) for such fiscal year.

(3) There are authorized to be appropriated out of the Navigation Improvement Account of the Trust Fund such sums as may be necessary to pay the Federal share of any eligible deep-draft nagivation improvement projects.

Special Credit Account

(d)(1) The Special Credit Account of the Trust Fund shall consist of the amounts transferred to such account under paragraph (2). Funds in such account may only be used to provide the credits allowed pursuant to paragraph (3) and any amounts credited to the subaccount of a qualified port authority under paragraph (3) may only be used to offset the local share of any eligible deep-draft navigation improvement project sponsored by such qualified port authority.

(2) At the end of each fiscal year, the Secretary of the Treasury shall transfer the unexpended balance remaining in the Operations and Maintenance Account of the Trust Fund to the Special Credit Account of the Trust Fund.

(3)(A) For each fiscal year, the Secretary of the Treasury shall credit to a subaccount maintained within the Special Credit Account of the Trust Fund for the benefit of a qualified port authority the amount determined with respect to such qualified port authority under subparagraph (B) for such fiscal year.

(B) The amount of the credit allowed under subparagraph (A) for the benefit of a qualified port authority in any fiscal year shall be an amount equal to the product of—

(i) the special credit percentage for such fiscal year, multiplied by

(ii) the amount by which the sum of—

(I) the aggregate amount of the vessel tax assessed and collected pursuant to section 4235(a)(1) of the Internal Revenue Code of 1954, and

(II) the aggregate amount of any qualified State vessel tax assessed and collected, at any eligible ports operated under the jurisdiction of such port authority in such fiscal year,

exceeds the costs of operation and maintenance of all eligible deep-draft commercial channels and harbors located at, or adjacent to, such ports for such fiscal year.

(C) For the purposes of this paragraph—

(i) the term "qualified port authority" shall mean any port authority for which, in any fiscal year, the sum of—

(I) the aggregate amount of tax assessed and collected pursuant to section 4235(a)(1) of the Internal Revenue Code of 1954, and

(II) the aggregate amount of any qualified State vessel tax assessed and collected at any eligible ports operated under the jurisdiction of such port authority,

exceeds the cost of eligible operations and maintenance for all eligible deep-draft commercial channels and harbors located at or adjacent to such ports for such fiscal year,

(ii) the term "special credit percentage" shall mean for each fiscal year the percentage ratio of the amounts transferred to the Special Credit Account under paragraph (2) to the amount by which the sum of—

(I) the aggregate amount of tax assessed and collected pursuant to section 4235(a)(1) of the Internal Revenue Code of 1954, and

(II) the aggregate amount of any qualified State vessel tax assessed and collected, at eligible ports operated under the authority of all qualified port authorities exceeds the costs of eligible operations and maintenance for all eligible deep-draft commercial channels and harbors located at or adjacent to such ports for such fiscal year.

(iii) The term "eligible port" means any port operated under the jurisdiction of any qualified port authority which, when used by a deep-draft commercial vessel at any time during a fiscal year, subjects such vessel to the imposition of a qualified State vessel tax.

(D) Amounts credited to the subaccount maintained within the Special Credit Account of the Trust Fund for the benefit of a qualified port authority may be used by such qualified port authority only for the purpose of paying the local share of any eligible deep-draft navigation improvement project sponsored by such qualified port authority.

(4) Any amounts credited to a subaccount maintained within the Special Credit Account of the Trust Fund for the benefit of a qualified port authority which have not been expended within five fiscal years shall be transferred to the Navigation Improvement Account of the Trust Fund.

(5) If, in any fiscal year, no port authority meets the definition of "qualified port authority" for the purpose of this subsection, then such amounts as would have been transferred to the Special Credit Account of the Trust Fund under paragraph (2) shall be transferred instead to the Navigation Improvement Account of the Trust Fund.

(e) After the Secretary has made the transfers required under subsections (b)(2), (c)(2), and (d)(2), proper adjustments shall be made in any amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the actual revenues from such taxes for preceding quarters.

TITLE III—TAX ON DEEP-DRAFT COMMERCIAL VESSELS USING DEEP-DRAFT COMMERCIAL CHANNELS, HARBORS, AND NAVIGATIONAL FACILITIES; SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

SEC. 301. (a) Chapter 33 of the Internal Revenue Code of 1954 (relating to facilities and services) is amended by inserting before subchapter B the following new subchapter:

"Subchapter A—Deep-Draft Commercial Channels, Harbors, and Navigational Facilities

"Sec. 4231. Tax on the use of deep-draft commercial channels and harbors.
"Sec. 4232. Tax on the use of Great Lakes navigation improvements.
"Sec. 4233. Tax on the use of deep-draft commercial channels or harbors for purposes other than loading or unloading commercial cargo.
"Sec. 4234. Reporting requirements.
"Sec. 4235. Collection of tax.
"Sec. 4236. Violations; enforcement.
"Sec. 4237. Definitions.

"SEC. 4231. TAX ON THE USE OF DEEP-DRAFT COMMERCIAL CHANNELS AND HARBORS.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the use of any deep-draft commercial channel or harbor within the United States by a deep-draft commercial vessel.

"(b) RATE OF TAX.—The amount of the tax imposed by subsection (a) with respect to any deep-draft commercial vessel shall be equal to the product of—

"(1) the uniform national vessel charge for the fiscal year, multiplied by

"(2) the value of any qualified commercial cargo unloaded from such vessel at a port or ports within the United States.

"(c) INTRAPORT TRANSFER.—The tax imposed under this section shall not apply to any vessel to the extent the commercial cargo unloaded from such vessel was loaded upon such vessel at the same port.

"SEC. 4232. TAX ON THE USE OF GREAT LAKES NAVIGATION IMPROVEMENTS.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the use of any Great Lakes navigation improvement operated or maintained by the United States by a deep-draft commercial vessel.

"(b) RATE OF TAX.—The amount of the tax imposed by subsection (a) shall be equal to the product of—

"(1) the uniform national vessel charge for the fiscal year, multiplied by

"(2) the value of all qualified commercial cargo contained in such vessel at the time of such use.

"SEC. 4233. TAX ON THE USE OF DEEP-DRAFT COMMERCIAL CHANNELS OR HARBORS FOR PURPOSES OTHER THAN LOADING OR UNLOADING COMMERCIAL CARGO.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the use of any deep-draft commercial channel or harbor within the United States for a purpose or purposes other than the loading or unloading of commercial cargo, including, but not limited to, convenience, bunkering, refitting, or repair.

"(b) RATE OF TAX.—The amount of the tax imposed by subsection (a) shall be determined by reference to a uniform national schedule of vessel charges established by the Secretary of the Treasury for this purpose.

SEC. 4234. REPORTING REQUIREMENTS.

"(a) REPORTING REQUIREMENTS.—(1) Upon the loading or unloading of any commercial cargo; or (2) upon passage through any Great Lakes navigation improvement operated or maintained by the United States, the master of a deep-draft commercial vessel shall report the value of all qualified commercial cargo loaded onto, unloaded from or contained in such vessel to the United States Customs Service or such other agency as the Secretary may designate for such purpose.

"(b) POWERS OF SECRETARY.—For the purpose of determining whether any person is in violation of subsection (a) of this section—

"(1) the Secretary may require any person engaged in waterborne commerce to (A) establish and maintain such records, (B) submit such reports, and (C) provide such other information as the Secretary may reasonably require;

"(2) the Secretary may also utilize any documentation required to be submitted pursuant to section 11 of the Act of September 22, 1922 (42 Stat. 1043); and

"(3) the Secretary, or his designee, shall have a right of entry to, upon, or through any vessel or any other premises of such person and may have access to and make copies of any records or other documents, not otherwise privileged, within the possession or control of such person, his agents or assigns.

"SEC. 4235. COLLECTION OF TAX.

"(a) ASSESSMENT AND COLLECTION.—The Secretary, acting through the United States Customs Service or such other agency as the Secretary may designate for such purpose, is authorized to assess and collect the taxes imposed under sections 4231, 4232, and 4233 of this subchapter—

"(1) the tax imposed under section 4231 shall be assessed and collected at the port of unloading;

"(2) the tax imposed under section 4232 shall be assessed and collected at such point or points within the great Lakes as the Secretary may designate by regulation or otherwise; and

"(3) the tax imposed under section 4233 shall be assessed and collected pursuant to regulations promulgated by the Secretary for this purpose.

"(b) LIABILITY FOR TAX.—Liability for the payment of the taxes imposed under sections 4231, 4232, and 4233 of this subchapter shall be imposed on the owner of such vessel, and, until paid, such taxes shall constitute a valid lien against such vessel in favor of the United States.

"SEC. 4236. VIOLATIONS; ENFORCEMENT.

"(a) FINDING BY SECRETARY.—Whenever, on the basis of any information available, the Secretary finds that any person is in violation of any requirement of this subchapter, the Secretary shall order such person to comply with this subchapter, including payment of any taxes which the Secretary determines to have been wrongfully withheld, with interest at the rate specified under section 6621 of the Internal Revenue Code of 1954, as amended. Thirty days after the date of an order from the Secretary to a person to be in compliance with this subchapter, and after an opportunity for a hearing, it shall be unlawful for that person to engage in waterborne commerce during any period when that person is in violation of any requirement of this subchapter.

"(b) ACTION BY ATTORNEY GENERAL.—Upon the request of the Secretary, the Attorney General may bring a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $200,000, or both, whenever any person violates any requirement of this subchapter or fails or refuses to comply with any order issued under subsection (a) of this section. Such penalty shall be deposited in the general fund of the Treasury of the United States.

"(c) JURISDICTION AND VENUE.—Any action under this section may be brought in the district court of the United States for the district in which the defendant resides, does business or is engaged in waterborne commerce, and such court shall have jurisdiction to require compliance, to assess any appropriate taxes or civil penalties as authorized under this subchapter, and grant injunctive or other equitable relief. Any deep-draft commercial vessel on account of which any tax shall have accumulated shall be liable for such taxes and may itself be arrested and proceeded against upon principles applicable to admiralty actions in rem.

"(d) UNLAWFUL DEPARTURE.—It shall be unlawful for any vessel engaged in waterborne commerce to depart or attempt to depart from any United States waters without making payment in full for all taxes imposed under this subchapter. Any vessel engaged in waterborne commerce which departs or attempts to depart from any United States waters without payment of all required taxes shall be subject to seizure by the Secretary.

"(e) UNLAWFUL DIVERSION.—It shall be unlawful for any person engaged in waterborne commerce knowingly to divert or cause to be diverted any waterborne commercial cargo destined for use or consumption in the United States from a port or ports within the United States to a port or ports outside of the United States for the purpose of avoiding the tax imposed under section 4231 of this subchapter. Any person in violation of this subsection shall be subject to a civil penalty not to exceed double the amount of tax which otherwise would have been imposed under section 4231, and any cargo found to have been so diverted shall be subject to seizure at the point of entry of such cargo into the United States, and shall not be released except upon payment of the penalty provided herein.

"SEC. 4237. DEFINITIONS.

"For purposes of this subchapter—

"(1) COMMERCIAL CARGO.—The term 'commercial cargo' shall mean any commodity, class, or category of commodities or classification of articles of waterborne commerce, including the carriage or transportation of passengers for hire, but shall not include bunker fuel, ships' stores, sea stores, or the legitimate equipment necessary to the operation of a vessel.

"(2) DEEP-DRAFT COMMERCIAL VESSEL.—The term 'deep-draft commercial vessel' shall mean a vessel engaged in waterborne commerce which when fully loaded, requires a channel or harbor of at least 24 feet nominal depth to ensure safe passage at mean low tide including also vessels of lesser draft engaged in the carriage or transportation of commercial cargo utilizing deep-draft channels or harbors in direct competition with deep-draft commercial vessels: *Provided, however,* That this term shall not be construed to include any vessel which requires a channel or harbor of at least 24 feet nominal depth to ensure safe passage at mean low tide engaged primarily in the ferrying of passengers or vehicles, or vessels engaged primarily in fishing or the cultivation or harvesting of other marine foodstuffs.

"(3) DEEP-DRAFT COMMERCIAL CHANNEL OR HARBOR.—The term 'deep-draft commercial channel or harbor' shall mean any channel or harbor, or element thereof, which channel, harbor or element is open to public navigation, and which is utilized in the transportation of commercial cargo in domestic or foreign waterborne commerce by means of deep-draft commercial vessels.

"(4) FISCAL YEAR.—The term 'fiscal year' means the 1-year period beginning on October 1 of each calendar year.

"(5) GREAT LAKES NAVIGATION IMPROVEMENTS.—The term 'Great Lakes navigation improvements' shall mean any lock, channel, harbor, or navigational facility located in the Great Lakes of the United States or their connecting waterways, including, but not limited to, the Detroit River, Saint Clair River, Lake Saint Clair, and the Saint Marys River, but shall not include the Saint Lawrence Seaway.

"(6) PERSON.—The term 'person' shall mean a natural person, partnership, corporation, or other entity organized for the transaction of business for profit, and any government or governmental unit or agency thereof engaged in waterborne commerce, other than the governments of the United States, Canada, a State, a political subdivision of a State, or any agency thereof, but shall not include a public or quasi-public corporation or other entity operating under a charter from or under the authority of the United States, Canada, a State, a political subdivision of a State, or an interstate authority, agreement, or compact.

"(7) **Port.**—The term 'port' shall mean any place located on or adjacent to a deep-draft channel or harbor and having facilities for the loading or unloading of commercial cargo onto or from a deep-draft commercial vessel, including a commercial vessel used in the transshipment of commercial cargo between a deep-draft commercial vessel and a port.

"(8) **Qualified commercial cargo.**—

"(A) **In general.**—The term 'qualified commercial cargo' means, with respect to any vessel, any item or unit of cargo which has not previously been taken into account in determining the amount of tax imposed by sections 4231, 4232, or any qualified state vessel tax with respect to such vessel.

"(B) **Exports excluded.**—The term 'qualified commercial cargo' shall not include any item or unit of cargo which is being exported from the United States to a point or points outside of the United States or its territorial waters.

"(9) The term 'Secretary' shall, unless otherwise indicated, mean the Secretary of the Treasury.

"(10) **Uniform national vessel charge.**—

"(A) **In general.**—The term 'uniform national vessel charge' shall mean, with respect to any fiscal year, an amount equal to the lesser of—

"(i) 0.06 per centum; or

"(ii) the lowest percentage which, when multiplied by the value of all qualified commercial cargo as projected by the Secretary of the Treasury for the next fiscal year, will equal the sum of—

"(I) 44 per centum of the eligible operations and maintenance costs for all deep-draft commercial channels and harbors within the United States and Great Lakes navigation improvements operated and maintained by the United States, as estimated by the Secretary of the Army for such fiscal year under section 201(b)(3) of the National Port System Act of 1983, plus

"(II) 100 per centum of the eligible operations and maintenance costs of the Saint Lawrence Seaway for such fiscal year.

"(B) TRANSITIONAL RULES.—

"(i) FISCAL YEAR 1984.—For the purpose of applying subparagraph (A)(ii)(I) with respect to the fiscal year beginning on October 1, 1983, '22 per centum' shall be substituted for '44 per centum'.

"(ii) FISCAL YEAR 1985.—For the purpose of applying subparagraph (A)(ii)(I) with respect to the fiscal year beginning on October 1, 1984, '33 per centum' shall be substituted for '44 per centum'.

"(11) ELIGIBLE OPERATIONS AND MAINTENANCE; ELIGIBLE DEEP-DRAFT COMMERCIAL CHANNELS AND HARBORS.—The terms 'eligible operations and maintenance' and 'eligible deep-draft commercial channels and harbors' have the respective meanings given to such terms by section 102(a) of this Act.

"(12) UNITED STATES.—The term 'United States' shall mean all area included within the territorial boundaries of the United States, including the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States exercises jurisdiction.

"(13) QUALIFIED STATE VESSEL TAX: FOREIGN-BOUND COMMERCIAL CARGO.—The terms 'qualified State vessel tax' and 'foreign-bound commercial cargo' have the respective meaning given to such terms by section 302 of this Act.

"(14) VALUE.—The term 'value' shall mean the declared value of any commercial cargo as evidenced by any bill of lading, cargo manifest, contract for carriage, or other documentary evidence of value, or, if the cargo shall not have a declared value, the fair market value of the cargo as determined by the Secretary.

"(15) WATERBORNE COMMERCE.—The term 'waterborne commerce' shall mean any commercial activity relating to the carriage or transportation of commercial cargo by a deep-draft commercial vessel.".

(b) The table of subchapters of chapter 33 of such code is amended by inserting before the item relating to subchapter B the following item:

"SUBCHAPTER A. Deep-Draft Commercial Channels, Harbors, and Navigational Facilities.".

(c) The amendments made by this section shall not alter, amend, or repeal any other provision of law imposing or relating to the imposition of a tax, fee, or charge on maritime vessels or on the use of navigable waterways.

(d) The amendments made by this section shall take effect on the day after the date of enactment of this Act.

AUTHORIZATION OF QUALIFIED STATE VESSEL TAXES

SEC. 302. (a) Consent is hereby given, pursuant to clauses (2) and (3) of section 10 of article I of the Constitution, to the imposition of a qualified State vessel tax by any State.

(b) For the purposes of this Act, the term "qualified State vessel tax" means a tax—

(A) which is imposed by a State on the use by any deep-draft commercial vessel of any deep-draft channel, harbor or element thereof located at or adjacent to any port or portion thereof over which the State has jurisdiction,

(B) the amount of which is determined under subsection (c)(1), and

(C) which meets the requirements of subsection (c)(2).

(c)(1) The amount of any qualified State vessel tax imposed with respect to the use of a port by a vessel shall be equal to the product of—

(A) the uniform national vessel charge for the fiscal year, multiplied by

(B) the value of foreign-bound commercial cargo loaded onto such vessel at such port.

(2) A tax imposed with respect to the use of a port by a vessel meets the requirements of this paragraph if—

(A) the owner of such vessel is the person liable for the payment of such tax;

(B) except for the costs directly allocated and attributable to the collection of such duty or tax, the net proceeds of all such collections shall be paid into the general fund of the Treasury of the United States for the use and benefit of the Operations and Maintenance Account of the Trust Fund established herein, and

(C) the State authorizes the United States Customs Service to collect payment of such tax on behalf of the State from the person liable for the payment thereof, and

(D) the State imposes penalties on any person who fails to pay such duty or tax which are similar to the penalties imposed under the Internal Revenue Code of 1954 on persons who fail to timely pay the tax imposed by section 4231 of such Code, and

(E) if the State elects not to authorize the United States Customs Service to collect payment of such duty or tax, then—

(i) the State must provide to the Comptroller General of the United States, upon his request, such books, documents, paper, or other information as the Comptroller General considers to be necessary or appropriate to enable him to carry out the audit required under subsection (d) of this section; and

(ii) the State provides an adequate means of collecting such tax from any person who does not pay such tax to the United States Customs Service;

(F) the State diligently uses the means described in subparagraph (E).

(d) The Congress expressly reserves the right to withdraw the consent guaranteed by it under subsection (a) with respect to any State if at any time it is determined that the conditions of consent set forth on subsection (c) of this section are not being complied with by such State, or an impediment to compliance with any such conditions is imposed under State law.

(e) The Comptroller General of the United States shall carry out periodic audits of the deep-draft commercial harbor operations of States that have elected not to authorize the United States Customs Service to accept payment of the duty or tax levied under this section in order to ascertain if the conditions of consent are being complied with. The Comptroller General shall submit to each House of Congress a written report containing the findings resulting from such audit and shall make such recommendations as he deems appropriate regarding the compliance of each State with the requirements of this section.

(f) For the purposes of this section—

(1) the term "foreign-bound commercial cargo" means commercial cargo which is being exported from the United States to a point or point outside the United States or its territorial waters.

(2) The terms "deep-draft commercial vessel" and "uniform national vessel charge", and "commercial cargo" have the respective meaning given such terms by section 4237 of the Internal Revenue Code of 1954.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

SEC. 303. The Act of May 13, 1954 (16 Stat. 92) (relating to the Saint Lawrence Seaway), is amended as follows:

(a) Add a new paragraph at the end of section 4(a):

"(13) shall accept such amounts as may be appropriated to the Corporation under subparagraph (b)(3)(A) of section 201 of the Deep-Draft Navigation Act of 1983: *Provided, however,* That such amounts shall be available only for the purpose of operating and maintaining those works which the Corporation is obligated to operate and maintain under subsection (a) of section 3 of this Act.".

(b) Add a new section at the end thereof:

"SEC. 13. WAIVER OF COLLECTION OF CHARGES OR TOLLS; REMITTAL OF REVENUES TO THE TREASURY OF THE UNITED STATES.

"(a) To the extent that that portion of the charge or toll levied on a vessel for its use of the Saint Lawrence Seaway payable to or on behalf of the Corporation exceeds the vessel tax which would have been imposed upon such vessel for its use of a Great Lakes navigation improvement under section 4232 of the Internal Revenue Code of 1954, as amended, the collection of such charge or toll by or on behalf of the Corporation is waived.

"(b) The Corporation shall remit to the Treasury of the United States all revenues derived from the collection of charges or tolls established under section 12 of this chapter.".

SEC. 304. Not later than two years after enactment of this Act, the Secretary of State, in consultation with the Secretary of Transportation, shall initiate discussions with the Government of Canada with the objective of reducing or eliminating all tolls on the international Great Lakes and/or the Saint Lawrence Seaway, and the Secretary of Transportation shall report to the Congress on the progress of such discussions and on the economic effects upon waterborne commerce in the United States of any proposed reduction or elimination in tolls.

TITLE IV—ESTABLISHMENT OF FEDERAL/LOCAL PARTNERSHIP FOR DEEP-DRAFT NAVIGATION IMPROVEMENT PROJECTS

SEC. 401(a). Prior to the submission to Congress of recommendations for the authorization or reauthorization of deep-draft navigation improvement projects under subsection 502(c)(1) of this Act, the Secretary of the Army (hereinafter referred to as the "Secretary") shall enter into a memorandum of agreement with the port authority or authorities sponsoring such project.

(b) The memorandum of agreement shall contain provisions establishing the responsibilities of each party with respect to the construction and operation of the project, including, but not limited to, a formula for the allocation of project costs between the United States and the port authority or authorities sponsoring the project, to be determined as follows—

(1) The local share of the total project cost for any deep-draft navigation improvement project shall be—

(A) for projects with nominal depths greater than twenty-four feet, but not exceeding thirty-five feet, 20 per centum;

(B) for projects with nominal depths greater than thirty-five feet, but not exceeding forty feet, 25 per centum;

(C) for projects with nominal depths greater than forty feet, but not exceeding forty-five feet, 25 per centum, plus 1 per centum of total project cost for each foot or fraction thereof over forty feet;

(D) for projects with nominal depths greater than forty-five feet, but not exceeding fifty feet, 30 per centum, plus 2 per centum of total project cost for each foot or fraction thereof over forty-five feet;

(E) for projects with nominal depths greater than fifty feet, but not exceeding fifty-five feet, 40 per centum, plus 3 per centum of total project cost for each foot or fraction thereof over fifty feet;

(F) for projects with nominal depths greater than fifty-five feet, but not exceeding sixty feet, 55 per centum, plus 4 per centum of total project cost for each foot or fraction thereof over fifty-five feet;

(G) for projects with nominal depths greater than sixty feet, 75 per centum.

(2) The local share of the project cost shall be reimbursed to the Treasury of the United States over the life of the project as estimated by the Secretary, but in no event to exceed fifty years from the date of completion of the project. The rate of interest on any indebtedness to the United States incurred as a result of the construction of a deep-draft navigation improvement project shall equal the rate of interest paid on the longest term obligation of the United States at the time the indebtedness was incurred, plus 1 per centum.

(c)(1) The Congress consents, under clauses 2 and 3 of section 10 of article I of the Constitution of the United States, to the imposition or levy of a duty or tax upon any vessel engaged in foreign commerce by any State, political subdivision of a State, or agency thereof, for the purpose of recovering the local share of any deep-draft navigation improvement project. All revenues derived from the imposition or levy of such duty or tax shall be paid into the Treasury of the United States, and shall be credited against the outstanding balance of the local share of the project costs.

(2) The Congress expressly reserves the right to withdraw the consent granted by it under paragraph (1) whenever it shall determine that—

(A) the conditions of consent set forth in paragraph (1) are not being or have not been complied with; or

(B) an impediment to compliance with any such condition has been or is likely to be imposed by such State, political subdivision of a State, or agency thereof.

(3) The consent granted under paragraph (1) shall not be construed to limit or deny any source of revenue for the financing of the local share of any deep-draft navigation improvement project not otherwise prohibited by law or the Constitution of the United States.

(d) Notwithstanding any other provision of this Act, navigation improvement projects previously authorized by Congress need not be reauthorized as provided in section 401(a). Such projects which have entered into a memorandum of agreement with the Secretary as outlined under section 401(b) shall be eligible for appropriations under section 201(c) of this Act, and are eligible for inclusion in the Secretary's recommendation under section 501(c)(1) and will, if included in the Secretary's recommendations, be submitted directly to the Appropriations Committees of Congress.

LOCALLY FINANCED CONSTRUCTION

SEC. 402. (a) A port authority or authorities may undertake the construction and operation of a deep-draft navigation improvement project upon entering into a memorandum of agreement with the Secretary.

(b) The memorandum of agreement shall contain provisions requiring the port authority or authorities—

(1) to comply with all applicable laws and regulations of the United States in the construction and operation of the project;

(2) to pay all costs of construction of the project without recourse to Federal funds;

(3) to pay all costs of postconstruction operations and maintenance of the project in excess of the costs of operations and maintenance of such channel or harbor had such project not been undertaken, as determined by the Secretary; and

(4) to hold the United States, its agents and employees harmless for any loss or damages which may be incurred as a result of the construction or operation of the project.

(c)(1) Whenever the Secretary shall determine, on the basis of any information available and after opportunity for a hearing, that any person or port authority is in violation of any provision of the memorandum of agreement entered into under this section, the Secretary shall order such person or port authority to comply with the memorandum of agreement, and such person or port authority shall have ninety days from the date of such order to come into compliance with the memorandum of agreement.

(2) Whenever any person or port authority shall remain in violation of an order of the Secretary in excess of ninety days, the Attorney General, upon the request of the Secretary, may bring a civil action for a permanent or temporary injunction or such other relief as may be necessary to bring such person or port authority in compliance with the memorandum of agreement. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant resides or does business.

TITLE V—EXPEDITED PROCEDURE FOR AUTHORIZATION AND REVIEW OF DEEP-DRAFT NAVIGATION IMPROVEMENT PROJECTS

RECOMMENDATIONS TO CONGRESS

SEC. 501. (a) Beginning ninety days after the date of enactment of this Act, port authorities may submit to the Secretary of the Army (hereinafter referred to as the "Secretary") proposals for the construction of deep-draft navigation improvement projects in accordance with section 401 (hereinafter referred to as the "project proposal"). Each project proposal shall contain—

(1) a detailed description of the project, including any related landside facilities to be constructed by the

port authority or authorities sponsoring the project; and

(2) a detailed plan for the financing of the local share of the project cost, including such assurances as to the repayment of any amounts to be borrowed from the Treasury of the United States as the Secretary, in consultation with the Secretary of the Treasury, may reasonably require.

(b)(1) Upon the receipt of a project proposal, the Secretary shall direct the Corps of Engineers (hereinafter referred to as the "Corps") to prepare and submit on an expedited basis (A) a report on the feasibility and benefit/cost ratio of the proposed project, and (B) an assessment of the environmental impact of the proposed project.

(2) In order to assist the Corps in the discharge of its duties under paragraph (1), the Secretary shall, within ninety days of the date of enactment of this Act, enter into a memorandum of agreement with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, the Secretary of the Interior, and the heads of such other agencies as may be authorized to enforce and administer the treaties and laws of the United States relating to the preservation and protection of the environment, providing, to the greatest extent practicable, for interagency cooperation and consolidated review of the environmental impact of any deep-draft

navigation improvement project which may be proposed under subsection (a). The memorandum of agreement shall specify the Corps as the lead agency in the consolidated review process, and shall establish a schedule for the completion of such review, including the conduct of such public hearings and the preparation of such reports as may be required by law, within a period not to exceed two hundred and forty days from the date of receipt of a project proposal by the Secretary.

(3) In the discharge of its duties under paragraph (1), the Corps may review and resubmit within one hundred and eighty days any previously prepared feasibility studies, benefit/cost analyses, or environmental impact assessments, with such changes or other modifications, if any, as, in the determination of the Corps, may be necessary to reflect the current feasibility, benefit/cost ratio or environmental impact of the project. The Corps may also accept any feasibility studies, benefit/cost analyses, or environmental impact assessments prepared and submitted by the port authority or authorities sponsoring the project, and shall have one hundred and eighty days from the date of acceptance or such studies, analyses, assessments, or other reports to review the same and make such changes or other modifications, if any, as, in the determination of the Corps, may be necessary to accu-

rately reflect the feasibility, benefit/cost ratio, or environmental impact of the project.

(4) The preparation and submission of the reports and assessments required under paragraph (1) shall not be construed to constitute final agency action, and shall not be subject to review in the courts of the United States.

(c)(1) The Secretary shall evaluate the reports and assessments prepared by the Corps and, not later than January 31 of each year, shall submit to the appropriate committee of each House of the Congress his recommendations for the construction of deep-draft navigation improvement projects, together with a list of all project proposals which have been submitted to the Secretary under subsection (a).

(2) The recommendations shall, to the greatest extent practicable, reflect a mix of projects of differing depths and scope and from each of the standard coastal and Great Lakes ranges.

(3) The Secretary shall not recommend to the Congress any project, or any combination of projects, for which the Federal share of projected annual outlays, when combined with the Federal share of projected annual outlays for all projects previously authorized or reauthorized under section 502, will exceed the amounts of the National Port System Trust Fund in such fiscal year.

AUTHORIZING RESOLUTION

SEC. 502. (a) Not later than ninety calendar days after the Secretary submits his recommendations for the construction of deep-draft navigation improvement projects, the committee to which the recommendations were submitted shall report a joint resolution approving or disapproving such recommendations in whole or in part.

(b)(1) If at the end of ninety calendar days after the committees to which the recommendations have been submitted have not reported a joint resolution approving or disapproving such recommendations in whole or in part, it shall be in order to move to discharge the committee from further consideration of such recommendations.

(2) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same program), and debate thereon shall be limited to not more than one hour, to be divided equally between those opposing and those favoring the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, and it shall not be in

order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(c)(1) When the committee has reported, or has been discharged from further consideration of such resolution, it shall be in order (even through a previous motion to the same effect has been disagreed to) to move to proceed to consideration of the resolution. The motion to proceed shall be highly privileged. An amendment to the motion to proceed shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(2) Debate on the motion to proceed shall be limited to not more than two hours, which shall be equally divided between those opposing and those favoring the resolution.

(d)(1) Consideration of the resolution, and any amendment, debatable motion, points of order, appeals, quorum calls, and recorded votes shall be limited to ten hours equally divided between those favoring and those opposed to the resolution.

(2) Debate on any amendment shall be limited to one hour, equally divided between those favoring, and those opposed to the amendment. No second degree amendment shall be in order.

(3) Any joint resolution or amendment thereto including projects other than those recommended by the Secretary shall not, if adopted, exceed the amounts available for ex-

penditure from the Navigation Improvement Account of the Deep-Draft Navigation Trust Fund in such fiscal year.

(4) When debate has concluded, the vote shall occur on the resolution without intervening business, points of order, motions or appeals. It shall not be in order to move to reconsider the vote by which the resolution was agreed to or disagreed to.

PERMIT SCHEDULE

SEC. 503. (a) Not later than seventy-five days after the date of authorization or reauthorization of any deep-draft navigation improvement project, the Secretary, in consultation with affected agencies, shall establish and publish in the Federal Register a schedule for the issuance or nonissuance of all Federal permits required to be issued prior to the initiation of construction of such project or related landside facilities (hereinafter referred to as the "permit schedule"). Each permit schedule shall establish deadlines for the issuance or nonissuance of all required permits within a period not to exceed twelve months from the date of publication of such schedule, and shall clearly identify the deadline applicable to the issuance or nonissuance of each permit governed by the schedule. Each schedule shall also provide for the joint processing and/or review of permits governed by the schedule wherever practicable.

(b) Any permit schedule established under subsection (a) shall apply to the issuance or nonissuance of all permits governed by such schedule in lieu of any schedule for such issuance or nonissuance which otherwise would apply, and shall be binding on the agencies affected by such schedule, except to the extent such schedule may be extended or otherwise modified under subsection (f) of this section or subsection (a)(3) of section 504.

(c) Any agency subject to the permit schedule may modify any schedule otherwise applicable to the issuance or nonissuance of any permits governed by the permit schedule, including, but not limited to, any schedule for the issuance or nonissuance of such permits established by law other than this Act, where such agency determines that such modification will facilitate compliance by the agency with the permit schedule. No such agency may, however, modify the permit schedule.

(d) The permit schedule, and any schedule otherwise applicable to the issuance or nonissuance of required permits modified under subsection (c) shall be reasonably designed to ensure adequate consideration of all matters relating to the processing or issuance or nonissuance of such permits.

(e) All agencies subject to the permit schedule shall, to the greatest extent practicable, consolidate its proceedings respecting the processing of permits governed by the schedule with the proceedings of other agencies respecting such processing.

(f) Upon the petition of any agency subject to the permit schedule, the Secretary may modify the deadline applicable to the issuance or nonissuance of any permit by such agency, but in no event to extend beyond the twelve-month period established under subsection (a). No extension of any deadline applicable to the issuance or nonissuance of any required permit by any agency may be granted under this subsection unless, in the opinion of the Secretary—

(1) such agency has exercised all due diligence in attempting to comply with the permit schedule and is nonetheless unable to comply with such schedule; or

(2) it would be impracticable for such agency to meet such deadline due to lack of sufficient funds or personnel or other matters beyond the control of the agency.

DECISIONS BY SECRETARY

SEC. 504. (a)(1) The Secretary shall monitor compliance with the permit schedule by all agencies subject to such schedule, and may require such agencies to submit such information or reports as the Secretary deems necessary for such purpose. If the Secretary determines, based upon such information as may be available to him, that the permit schedule is threatened with delay, the Secretary shall 'determine the reason for such delay, and notify the appropriate agency of his determination. Following such notification, the Secretary may take such action as he deems reasonable and necessary to avoid any delay.

(2) Whenever the Secretary shall determine, on the basis of any information available to him, that an agency subject to the permit schedule has failed, or is reasonably likely to fail, to meet any deadline imposed under the schedule, the Secretary shall provide notice of his determination to such agency and other interested persons or parties requesting notification of such determination. The Secretary shall then proceed, on an informal basis, to determine the cause of such failure and any action which may be taken by the agency to conform to the permit schedule.

(3) Within sixty days of any determination under paragraph (2), the Secretary shall, in furtherance of the purposes of this Act—

(A) modify the permit schedule so as to allow the agency additional time in which to meet the deadline imposed under the schedule; or

(B) assume the function of such agency with respect to the matter governed by the permit schedule.

In no event may any modifications of the permit schedule under subparagraph (A) provide for an extension of time beyond the twelve-month period established under subsection (a) of section 503.

(4) Any determination by the Secretary under paragraph (2), and any action by the Secretary under paragraph (3), shall not be construed to constitute final agency action, and shall not be subject to review in the courts of the United States.

(b)(1) Whenever the Secretary shall determine that an agency subject to the permit schedule cannot, in the exercise of due diligence, meet a deadline imposed under the schedule, and that a modification of the schedule so as to allow such agency additional time to meet such deadline would lead only to further delay in the issuance or nonissuance of the permit to which the deadline applies, the Secretary shall issue an order requiring the agency to transmit all records or other documents pertinent to the issuance or nonissuance of such permit to the Secretary for action in lieu of action by such agency. Notice of such order shall be published in the Federal Register and provided to such agency and such other interested persons or parties requesting notification of such order.

(2) Upon receipt of notice of an order under paragraph (1), the agency subject to such order shall transmit all records or other documents pertinent to the issuance or nonissuance of such permit to the Secretary for his action. Upon the receipt of such records or other documents, and within the

twelve-month period established under subsection (a) of section 503, the Secretary shall take such additional action as is necessary to make, and shall make, a final decision with respect to the issuance or nonissuance of the subject permit.

(3) Nothing in this section or in section 503 shall be construed to relieve any agency of any requirement established by law, or to affect the application of any law or regulation to a deep-draft navigation improvement project or related landside facilities. Nothing in this section or in section 503 shall be construed to affect the substantive basis upon which any agency decision is made with respect to a deep-draft navigation improvement project or related landside facilities, or to affect or influence the outcome of any such agency decision.

JUDICIAL REVIEW

SEC. 505. (a)(1) Any action or other proceeding for review of any final agency action, any action or other proceeding for reivew of any statement, assessment, analysis, report, or other document required to be filed prior to the initiation of construction of a deep-draft navigation improvement project or related facilities, may only be brought in the district court of the United States for the district in which such project or related facilities are to be constructed or located, and any such action or other proceeding shall be filed in such court no later than ninety days after the date of publication of notice of such final agency action or notice of the filing of such statement, assessment, analysis, report, or other document.

(2) The court shall, to the greatest extent practicable, consolidate all actions and proceedings relating to a single deep-draft navigation improvement project or related landside facilities, and shall expedite its consideration of such actions or proceedings to the greatest extent practicable within the bounds of its discretion and applicable law.

(3) No court shall have jurisdiction to grant injunctive or other equitable relief with respect to any action or proceeding filed in accordance with this subsection, except when the court finds an emergency to exist or in conjunction with a final judgment or decree. In issuing a final judgment or decree, the court may award the prevailing party its costs and attorneys' fees when, in the determination of the court, such action or proceeding was instituted or maintained without good cause and solely for the purpose of delay.

(b) Any final agency action governed by the project schedule, and any statement, assessment, analysis, report, or other document required to be filed prior to the initiation of construction of a deep-draft navigation improvement project or related landside facilities, shall not be subject to review except as provided in subsection (a) of this section; and any final agency action governed by the project schedule, and any statement, assessment, analysis, report, or other document required to be filed prior to the initiation of construction of a deep-draft navigation improvement project or related landside facilities, with respect to which review could have been obtained under subsection (a) of this section, shall not be subject to review in any other action or proceeding.

SEPARABILITY OF PROVISIONS

SEC. 506. If any provision of this Act, any amendment made by this Act, or the application of such provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act, the amendments made by this Act, and the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

II

98TH CONGRESS
1ST SESSION

S. 970

To provide for the operation, maintenance, and construction of deep-draft channels and harbors, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 5, 1983

Mr. MOYNIHAN (for himself and Mr. STAFFORD) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To provide for the operation, maintenance, and construction of deep-draft channels and harbors, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Harbor Improvement and Maintenance Act of 1983".

TITLE I—OPERATIONS AND MAINTENANCE

SEC. 101. (a) The Secretary of the Army, acting through the Chief of Engineers (hereinafter in this Act referred to as the "Secretary"), is authorized to enter into cooperative agreements with appropriate non-Federal interests to maintain the deep-draft channels and harbors of the United

States to the depths and widths authorized by law, or to the depths and widths the construction of which was initiated by non-Federal interests after July 1, 1970, and prior to January 1, 1981, or to the depths and widths that may be constructed under the terms of title II of this Act. After October 1, 1983, the Secretary shall expend no funds to maintain a deep-draft channel or harbor of the United States except as authorized under this title.

(b) There is authorized to be appropriated for the purpose of this title $375,000,000 for the fiscal year ending September 30, 1984; $400,000,000 for the fiscal year ending September 30, 1985; $430,000,000 for the fiscal year ending September 30, 1986; $460,000,000 for the fiscal year ending September 30, 1987; and $490,000,000 for the fiscal year ending September 30, 1988.

SEC. 102. The Secretary shall impose a uniform cargo tonnage fee on vessels having a maximum design draft of more than twelve feet which are engaged in commercial waterway transportation for all cargo transported via one or more deepwater channels or harbors, as defined in this Act, according to the following table:

For shipments transported—	Per ton
After September 30, 1983 and before October 1, 1984	$0.082
After September 30, 1984 and before October 1, 1985	$0.099
After September 30, 1985 and before October 1, 1986	$0.119
After September 30, 1986 and before October 1, 1987	$0.139
After September 30, 1987	$0.159.

SEC. 103. After September 30, 1987, fees authorized under this title shall be adequate to recover annually an amount which will equal 50 per centum of anticipated operation and maintenance expenditures of the corps assigned to deepwater channels or harbors, including amounts needed to recover all costs of administration. After September 30, 1987, the Secretary shall adjust fees on the basis of:

(i) anticipated corps expenditures for operation and maintenance of all deepwater channels and harbors;

(ii) corrections for actual expenditures and amounts recovered; and

(iii) the expected volume of commercial traffic.

SEC. 104. Beginning October 1, 1985, no Federal funds will be expended for operation and maintenance of a deepwater channel or harbor project when the Chief of Engineers determines that operation and maintenance costs per tonnage of seagoing cargo at such project exceed or are expected to exceed five times the national average, unless a non-Federal public body agrees to reimburse those expenditures in excess of five times the national average. Determinations by the Chief of Engineers shall be based on a five-year average.

SEC. 105. (a) Fees collected solely for use of the Great Lakes connecting channels from vessels not otherwise subject to this section shall be credited to the Saint Lawrence

Seaway Development Corporation, to be applied to reduce tolls on the seaway. Such fees may be waived as part of any international agreement of reciprocity.

(b) Beginning October 1, 1984, there is authorized to be appropriated such sums as may be necessary to meet one-half of the obligations of the Saint Lawrence Seaway Development Corporation related to operation and maintenance costs of the seaway. Tolls on the seaway shall be reduced accordingly.

(c) Notwithstanding any other provision of this Act, the Secretary shall be responsible for the full cost of maintaining (1) the connecting channels between the Great Lakes and (2) any deep-draft channel and harbor of the United States, which was authorized to serve as a harbor of refuge and which lacks significant commercial waterway transportation.

SEC. 106. (a) The Secretary shall establish any reasonable requirements for data collection and vessel right-of-entry that is needed in developing fee schedules and determining violations. Waterborne commerce data collected under authority of section 11 of the River and Harbor Act of 1922 may also be used.

(b) Data collected under section 106(a) shall be available to the public. Such information would be subject to protection under section 1905 of title 18 of the United States Code (dealing with nondisclosure of information and penalties for such acts), except for use by officials carrying out this Act.

(c) Section 11 of the Act of September 22, 1922 (42 Stat. 1043), is amended by inserting "no more than $200,000" in lieu of "$100".

SEC. 107. (a) Pursuant to section 101 of this Act, the Secretary shall enter into cooperative agreements with the appropriate non-Federal public body in accordance with the procedures set forth in the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501). Such agreement shall set forth the terms under which the provisions of subsection 101(a) shall be carried out for each deepwater channel and harbor within the jurisdiction of the non-Federal public body. Maintenance dredging shall be performed as specified by the cooperative agreement: *Provided, however,* That the non-Federal public body is not in violation of any provisions of this Act as determined by the Secretary.

(b) Before the Secretary shall undertake any operation or maintenance of a channel or harbor in accordance with the provisions of this title, the appropriate non-Federal public body shall further agree in writing to hold and save the United States harmless from liability for damages arising out of such activities, except to the extent that such damages are caused by the fault or negligence of the United States or of its contractors.

(c) Nothing in this section shall be construed to prohibit or otherwise interfere with the authority of the Secretary or any other Federal agency official to carry out channel dredging or other activities, at Federal expense, for flood emergency preparation, flood fighting, or the repair and restoration of damages to deep-draft channels and harbors of the United States resulting from a natural disaster, as declared by the President.

(d) For those harbors and channels whose total import, export, coastwise, and lakewise traffic was less than one million tons in the calendar year ending December 30, 1981, the appropriate non-Federal public body may be granted a waiver by the Secretary from the contractual requirements of this title for a period not to exceed one year following October 1, 1983, if—

(1) the Secretary finds that the appropriate non-Federal public body is prohibited by State law, enacted before December 31, 1981, to raise such funds as are necessary to meet the contractual obligations to the Secretary; and

(2) the Secretary of Transportation finds that for the appropriate non-Federal public body, in its port activities, the operating costs exceed the income in the non-Federal public body's latest fiscal year ended prior to the date of enactment of this Act.

SEC. 108. (a) Whenever, on the basis of any information available and after opportunity for a hearing, the Secretary finds that any person or entity is in violation of any requirement of this title, the Secretary shall order the person or entity to comply with the title, including payment of any fees which the Secretary determines to have been wrongfully withheld, with interest at the rate specified under section 6621 of title 26, United States Code. Thirty days after the date of an order from the Secretary to a person or entity to be in compliance with this title, it shall be unlawful for that person or entity to engage in commercial waterway transportation during any period when that person or entity is in violation of any requirement of this title.

(b) Upon request of the Secretary, the Attorney General may bring a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $200,000 or both, whenever any person or entity violates any requirement of this title or fails or refuses to comply with any order issued under subsection (a). Such penalty shall be deposited in the general fund of the Treasury.

(c) Any action under this section may be brought in the district court of the United States for the district in which the defendant resides, does business, or is engaged in commercial waterway transportation as defined under this Act and such court shall have jurisdiction to require compliance, to assess any appropriate fee or civil penalties as authorized under this Act and grant injunctive or other equitable relief. Any vessel or watercraft on account of which any user fee shall have accumulated shall be liable for such fees and may itself be arrested and proceeded against upon principles applicable to Admiralty actions in rem.

SEC. 109. (a) It shall be unlawful for any vessel engaged in foreign trade to depart or attempt to depart from any United States waters without making payment in full for all tonnage fees prescribed pursuant to this Act for any cargo transported on any deepwater channel or harbor. Any vessel engaged in foreign trade which departs or attempts to depart from any United States harbor without payment of all required tonnage fees shall be subject to seizure by the Secretary.

(b) Upon the request of the Secretary, employees and officers of the United States Customs Service shall act on a reimbursable basis as agents for the collection from vessels engaged in foreign trade of fees prescribed pursuant to this Act. Upon such a request, the Secretary may delegate to employees and officers of the United States Customs Service any authority for collection of fees conferred on the Secretary by this Act, including any powers of enforcement.

(c) Within sixty days of enactment of this Act, the Secretary shall enter into a memorandum of understanding with the Secretary of the Treasury specifying the duties and responsibilities of the United States Customs Service, and the administrative costs therefor, for collection of tonnage fees from vessels engaged in foreign trade when requested to do so by the Secretary.

TITLE II—CONSTRUCTION OF IMPROVEMENTS

SEC. 201. (a) After coordination with affected Federal agencies and concerned non-Federal public bodies the Secretary of the Army, acting through the Chief of Engineers, is authorized to study the feasibility of development of deepwater channels and harbors or the improvement, rehabilitation, or modification of existing deepwater channels and harbors of the United States as the Secretary determines to be reasonable and desirable for commercial waterway transportation.

(b) To expedite the completion of a study initiated pursuant to subsection (a) or prior to enactment of this Act, the Secretary is authorized to accept from the non-Federal public body up to 50 per centum of the cost to carry out the appropriate preconstruction planning and design work.

SEC. 202. (a) Prior to Federal initiation of construction of a project approved pursuant to this title or a project previously authorized by the Congress for which Federal construction has not been initiated on either the total project or a separable element thereof, the Secretary and the non-Federal public body shall enter into a cooperative agreement according to procedures set forth in the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501). The non-Federal public body shall agree to—

(1) provide to the Federal Government lands, easements, rights-of-way, and relocations required for construction, operation, and maintenance of such project;

(2) hold and save the United States free from damages due to the construction or rehabilitation, and operation and maintenance of such project except for damages due to the fault or negligence of the United States or its contractors; and

(3) provide to the Federal Government a share of all other construction costs of such project. One-half of such share shall be reimbursed on an annual basis during construction, beginning not later than one year after construction is initiated. The remaining one-half of such percentage shall be reimbursed on an annual basis commencing no later than one year after the project becomes available for use and shall be fully repaid, including interest on the unpaid balance, within the life of the project but in no event to exceed thirty years after the date the project becomes available for use, as determined by the Chief of Engineers. The per-

centage of construction costs to be reimbursed shall be determined by one of the following:

(A) For all project depths greater than twenty feet, up to and including forty-five feet, 60 per centum.

(B) For project depths greater than forty-five feet, 75 per centum.

(b) If the Secretary determines that fees collected pursuant to title I and contributed by vessels using the channels and harbors of a non-Federal public body exceed the average annual maintenance dredging costs of the channels and harbors of the non-Federal public body, the Secretary shall credit the excess amount accumulated each year toward the non-Federal public body's share of the construction costs of an authorized project to deepen or widen a deepwater channel or harbor: *Provided, however,* That not more than a total of $90,000,000 shall be credited to non-Federal public bodies in any fiscal year: *And provided further,* That the Secretary allocates such credited funds according to the relative contribution of excess fees of each non-Federal public body.

(c) The interest rate used pursuant to this section shall be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States at the time Federal construction funds are first appropriated.

(d) This title shall not be construed to prohibit non-Federal public bodies from securing financing through means other than provided for in this Act or from providing reimbursements on a more expedited basis pursuant to agreements with the Secretary.

(e) Subparagraph (D) of section 103(b)(4) of the Internal Revenue Code of 1954 (relating to interest on certain governmental obligations) is amended by inserting the words "navigation channels and harbors and appurtenant works," after the word "wharves,".

SEC. 203. Cooperative agreements with non-Federal public bodies to carry out obligations required by this title may relate to the timing and extent of such obligations to projects or to separable units, features, or segments of such projects as the Chief of Engineers determines to be reasonable and otherwise within the requirements of this title and the authorizations for the improvements concerned. Such agreements may reflect that they do not obligate future State legislative appropriations for their performance or payment when obligating future appropriations or other funds would be inconsistent with State constitutional or statutory limitations.

SEC. 204. The Secretary shall submit to Congress not later than February 1 of each year a list of construction projects proposed to be fully funded in the succeeding fiscal year, including for each project a final environmental impact statement for the plan of improvement as required by the National Environmental Policy Act of 1969. For each project on the list, the Secretary shall submit to Congress, with the environmental impact statement, a statement of the Secretary's compliance, at that time, with the Clean Water Act, the Fish and Wildlife Coordination Act, and other statutory requirements applicable to the improvement. These statements and other applicable statutory requirements shall be completed on an expedited basis pursuant to schedules, established by the Secretary. Such schedules shall be established by the Secretary after consultation and concurrence with other officials of the United States and the affected States having responsibilities therewith and shall be incorporated into the cooperative agreements pursuant to subsection 202(a). Such officials shall thereafter make their necessary decisions and otherwise provide data and comment as they deem appropriate pursuant to the Secretary's schedules. The plan of improvement addressed by the environmental impact statement for each project shall be eligible for full construction appropriations in the first year of construction and implementation, pursuant to subsection 202(a), and may be undertaken only if the Congress approves of the plan of improvement for each individual project by joint resolution within ninety calendar days of its receipt.

SEC. 205. The Secretary is authorized to complete channel and harbor construction projects for which construction was initiated by the Secretary prior to the date of enactment of this Act: *Provided,* That for projects in which the appropriate non-Federal interest has not entered into a written contract as of December 31, 1981, with the Secretary to provide the local cooperation required pursuant to the project authorization, including, where applicable, an agreement under section 221 of Public Law 91–611, as amended, such non-Federal interest shall be required to contract with the Secretary to repay, within thirty years of the date of enactment of this Act, the appropriate percentage of the cost of all such work pursuant to subsection 202(a) undertaken after September 30, 1983, together with interest on the unpaid balance at a rate to be determined by the Secretary of the Treasury.

SEC. 206. (a) Nothing in this Act shall be construed to prohibit or otherwise interfere with the Secretary or other Federal authority to operate, maintain, or improve any deep-draft channel or harbor of the United States for purposes of Coast Guard navigation requirements, Department of the Navy navigation requirements, or requirements for vessels carrying military personnel and material.

(b) Any project authorized under the provisions of this section may include additional improvements requested by the appropriate non-Federal public body: *Provided,* That prior to the commencement of such improvements, the appropriate non-Federal public body enters into a cooperative agreement with the Secretary or other Federal authority to pay, during the period of construction, that portion of the project's cost which the Secretary or other Federal authority determines to be allocable to non-defense-related needs in accordance with requirements of subsection 202(a). If such non-Federal public body fails to so participate, the Secretary or other Federal authority shall design such project solely to meet national defense requirements.

(c) If a non-Federal public body undertakes a project under the terms of section 202 of this Act that can be expected to provide direct benefits to the national defense requirements of the United States, the Secretary or other Federal authority is authorized prior to the commencement of construction to contract with such non-Federal public body, subject to appropriations Acts, to pay, during the period of construction, that portion of the project costs directly attributable to national defense requirements, as defined by subsection (a) of this section.

SEC. 207. Beginning on October 1, 1983, the Secretary shall undertake no construction work on a deep-draft channel or harbor of the United States except under the terms of this title.

TITLE III—GENERAL PROVISIONS

SEC. 301. (a) On or after October 1, 1983, and in accordance with the provisions of this section and any regulations promulgated by the Secretary pursuant to this section, an affected non-Federal public body may provide for the recovery of its obligations pursuant to titles I and II (including its administration expenditures incurred therefor) by the collection of fees for the use of the project. Notwithstanding any prior law to the contrary, charges may include cargo or vessel fees or tolls or harbor user charges. All amounts collected under authority of this section, except amounts needed to offset non-Federal administrative expenses of collection, shall be used to satisfy the non-Federal public bodies' obligations under this Act.

(b) Fees collected to recover the cost of any channel or harbor improvement undertaken pursuant to this Act shall reflect to the maximum extent practical the service and benefits provided to each commercial vessel or cargo laden therein. Such fees shall be established after a public hearing pursuant to State law: *Provided, however,* That prior to establishment of such fees, the Office of the Special Trade Representative and the Secretary of the Treasury shall be consulted and shall concur in the fee schedule solely on the basis of assuring compliance with the General Agreement on Tariffs and Trade.

(c) Fees collected by a non-Federal interest pursuant to the authority of this section shall be used only for the purpose of paying for the non-Federal share of the cost of construction and maintenance work on deep-draft channels and harbors of the United States, or any obligation undertaken for that purpose.

SEC. 302. For the purposes of this Act the term—

(a) "deepwater channels and harbors" means coastal or Great Lakes channels and other bodies of water that are constructed, improved, operated, or maintained as an authorized Federal project for commercial navigation which provide, through deepening or other works, water depths greater than twenty feet throughout or in part, except for entrance channels providing access solely to harbors with authorized depths of twenty feet or less, and channels administered by the Saint Lawrence Seaway Development Corporation: *Provided*, That such channels and harbors on the Columbia River, Washington and Oregon, shall be considered to exist only up to the downriver side of Bonneville Lock and Dam: *And provided further*, That such term does not mean local access or berthing channels;

(b) "commercial waterway transportation" means any use of a vessel in the coastal or lakewise waterway system:

(1) in the business of transporting persons or property for compensation or hire, or

(2) in transporting persons or property in the business of the owner, lessee, or operator of the vessel;

(c) "corps" means the United States Army Corps of Engineers;

(d) "seagoing" means traffic or cargoes transported on the open oceans or Great Lakes beyond the confines of any one or contiguous series of deepwater channel or harbor projects, and includes the categories in the corps' publication "Waterborne Commerce of the United States," to wit: import, export, coastwise, lakewise, and intraterritorial;

(e) "Secretary" means the Secretary of the Army;

(f) "Treasury" means the Treasury of the United States;

(g) "vessels engaged in foreign trade" means any vessel engaged in commercial waterway transportation carrying cargo between ports of the United States and foreign countries; and

(h) "non-Federal public body" means a State or a legally constituted public body of a State or of more than one State which has full authority and capability to enter into and perform agreements and to pay damages, if necessary, in the event of failure to perform.

Sec. 303. The Secretary, in consultation with the Secretaries of State, Commerce, Transporation, Treasury, Energy, and Agriculture, the Attorney General of the United States, and the Director of the Office of Management and Budget, may promulgate, and may from time to time revise, regulations and guidelines to govern the programs authorized by this Act, including but not limited to the program of non-Federal fee collection that may be undertaken pursuant to the authority of section 301.

Sec. 304. No fees shall be collected under authority of this Act for—

(a) vessels owned by, or under bareboat charter or time charter to, the United States or any other Nation and not engaged in commercial waterway transportation; or

(b) vessels engaged in commercial waterway transportation owned by, or under bareboat charter or time charter to, other nations that exempt such vessels of the United States from similar fees in their ports, or

(c) vessels used by a State or political subdivision thereof transporting persons or property in the business of the State or political subdivision.

OMNIBUS WATER RESOURCES LEGISLATION

MONDAY, JUNE 27, 1983

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON WATER RESOURCES,
Washington, D.C.

The subcommittee met at 10 a.m., in room SD-406, Dirksen Senate Office Building, Hon. James Abdnor (chairman of the subcommittee) presiding.

Present: Senators Abdnor and Bentsen.

Senator ABDNOR. The Subcommittee on Water Resources of the Committee on Environment and Public Works will come to order.

* * * * * * *

[NOTE.—The omitted portion of this days proceedings, on the subject of dam safety, may be found in part 3 of these hearings.]

Today, we will have a panel of witnesses representing shipping interests on the subject of deep port user fees. They were unable to be here last week at our meeting and we are happy to provide them time this morning.

We will be hearing from Mr. Louis Carlson, cochairman, transportation committee, National Association of Wheatgrowers, Mark Joseph, president, Anker Energy Corp., and Keith Bunting, Chemical Manufacturers Association, manager, government and public affairs, Dow Chemical Co.

I will let you introduce yourselves. You are well aware that your entire statements will be made a part of the record and we would ask you to summarize in 5 minutes each. We would like to have your input though and we appreciate your coming today. We will start left to right.

STATEMENT OF MARK JOSEPH, PRESIDENT, ANKER ENERGY, CORP., NATIONAL COAL ASSOCIATION

Mr. JOSEPH. Thank you very much, Mr. Chairman.

Members of the committee, I am Mark Joseph, the president of Anker Energy Corp. in New York. My firm is both a trader and a producer of coal, exporting 3 million tons a year and producing 2 million tons annually.

I am chairman of the Coal Exporters Association of the United States, whose members are responsible for more than 90 percent of the Nation's coal exports. I am also a director of the National Coal Association, whose members include coal producers, transporters, and sales companies among others who are associated with the coal industry.

On behalf of these two organizations, I commend the chairman and this committee for its leadership over the past years in drawing attention to the need for a port improvement policy, fostering such needed debate on the various and sometimes controversial issues which surface when considering requirements to both maintain and improve our coastal port system in order to maintain and increase the U.S. position in world trade, and finally in holding these hearings on compromise port development proposals which have emerged this year after months of diligent work.

We appreciate the oppportunity to appear here today to present our views and to offer qualified support for S. 865 now being considered by this committee.

I have filed a lengthy statement for the record which discusses the potential growth in the world coal market and the high level of competition which exists in this market now and will continue to exist over the next 15 years.

Senator ABDNOR. We are happy to have that, Mr. Joseph. It wil be made a part of the record.

Mr. JOSEPH. Several other items which are also contained in that written statement. In view of the time constraints I will not summarize these points but will specifically address our views on the legislation currently pending before the committee.

The need for deep draft ports has been evident for several years but the costs both in money and time have been recognized as well.

National Coal Association was among the first to acknowledge that, despite the need, our coastal ports would not be dredged without agreement on the part of the port and the user to pay at least part of the projects costs. Almost 2 years ago, the NCA Board adopted a position which would be supportive of legislation authorizing dredging projects to be paid in full or in part by local—port and user—interests.

But, our support for harbor improvements funded at least in part by non-Federal interests was contingent on inclusion of legislative reforms to speed the environmental review and permitting process which now result in an unacceptable 20-plus-year completion schedule for any project.

The NCA board of directors reaffirmed that position in mid-June. Further, the board stated that if necessary to accomplish this needed dredging work, the NCA would accept a minimal national uniform fee, levied on traffic using east, west and gulf coast ports to fund a small percentage of annual operations and maintenance costs. The NCA does not support imposition of these fees on Great Lakes traffic.

Favorable action on S. 865, incorporating the modifications discussed below, would:

First, give a clear signal to our customers abroad that the United States is making every attempt to be as competitive in the world coal market as possible through initiation and implementation of a port improvement policy.

Second, allow economic projects to proceed as quickly as possible by expediting the time required to authorize, review, permit and fund these projects;

Third, assure the availability of one or more deep draft ports by the early 1990's;

Fourth, give individual ports the flexibility required to tailor improvement projects and payment terms to best meet their own commercial needs.

We believe, however, that S. 865 would be a stronger bill with certain modifications.

NEW CONSTRUCTION/NAVIGATION IMPROVEMENTS

S. 865 provides that the costs of port dredging would be shared between the Federal Government and the local port on a sliding scale—the deeper the draft, the greater the local contribution.

The port would propose a project to the Corps of Engineers for consideration along with other proposals throughout the Nation. Congress would in turn act on the package of proposals prepared and submitted by the Corps of Engineers. Funds would be appropriated from the national port system trust fund.

The port would include in its proposal an agreement outlining repayment terms. If, however, a port did not wish to take advantage of the Federal contribution, the port could proceed with improvement projects independently after agreeing to fund completely both costs of construction and costs of additional operation and maintenance.

This is a positive approach to review authorization and funding of proposed projects. It is especially commendable that:

First, ports wishing to bear the full cost of a project can proceed on their own, but that;

Second, ports wishing to share costs with the Federal Government can have the asurance that the Federal Government will advance 100 percent of the ammended funds.

But, there are several points that should be raised:

First, the economic and other tests should be sufficiently strong to insure that, in view of limited funds, funding will be available to the most economically viable projects on a priority basis without regard to geographic location;

Second, language should be included to give individual ports wide discretion on the way that their share of the project construction costs are funded, as the port may decide that it is not in their own commercial interest to impose a user fee. If, however, the port should impose user fees—port specific—S. 865 should be modified to instruct ports that such fees should be imposed uniformly on all foreign commerce using the same level of service and should not be imposed without adequate public hearing.

Third, language should be included that specifies full Federal advancement of funds, but should provide that the pay back period does not begin until completion of the project.

Fourth, full project fund appropriation should be automatic upon congressional authorization of the project. Annual appropriations, should be avoided.

OPERATIONS AND MAINTENANCE COSTS

S. 865 would impose a nationwide user fee on the value of cargo to fund 40 percent of the annual costs of operation and maintenance at our coastal ports and on the Great Lakes. The fee would be imposed on all export and import traffic—as well as coastwise traffic, would be phased in over a 3-year period and would be capped at a maximum 0.06 percent of the dollar value of the cargo.

This positive approach based on cargo value, recognizes:

First, that the Federal Government has a vital and a continuing role and interest in maintaining this Nation's port system;

Second, that if a local share of O&M costs are necessary, a uniform fee spread across all commodities and all traffic is the most equitable approach and can be imposed with the least problems and traffic pattern disruptions;

Third, that bulk commodities are extremely sensitive to market prices and can bear only a small additional charge without affecting their competitive position in the world market;

Fourth, allows the actual fee to carry with the market price.

We do have several concerns.

First, although we recognize the necessity for the user to bear some share of the O&M costs, this share should be minimal. It would be desirable if the costs borne by the user were less than proposed in S. 865, but should certainly not be more—either as a percentage of total costs covered by the user fee or as an absolute value, that is, 0.06 percent per dollar value.

Second, the world market for U.S. coal—and indeed all export commodities, is very weak and can stand no additional costs. In recognition of this, the actual imposition of the phase-in of these fees should be delayed as long as possible.

Finally, these user fees should be limited to traffic on the east, west and gulf coasts and should not be imposed on Great Lakes traffic.

The Great Lakes present certain inherent problems which should be thoroughly studied before any fees are placed on traffic moving through these ports. Any user fee would place U.S. ports at a distinct disadvantage with Canadian ports and could cause traffic diversion and contribute to an even higher level of unemployment in the already economically depressed Midwest.

Further, foreign steel and iron ore would gain significant advantages over American steel and iron ore. As pointed out in statements filed with the House Committee on Merchant Marine and Fisheries:

If S. 865 or S. 970—the Moynihan bill—were to be enacted, the following situations would exist on the Great Lakes:

First, foreign steel would gain a price advantage over American-made steel of anywhere from approximately 55 cents to $2.15 a ton.

Second, foreign iron ore would gain a price advantage of approximately 27 cents to 67 cents a ton over iron ore in the Great Lakes region—namely iron ores produced in Minnesota and Michigan.

Third, Canadian grain shippers from the head of the lakes at Thunder Bay, Ontario, would have their transportation costs reduced by anywhere from 13 cents to 19 cents a ton. This gives them an added competitive advantage on world markets over those U.S. grain shippers using our inland waterway systems—the Mississippi, for example.

Fourth, all foreign shippers of goods into or out of the Great Lakes would have reduced costs of transportation while all domestic shippers of goods from one Great Lakes port to another would have their transportation costs increased.

We would, therefore, suggest that a complete study of the effects of user fees on Great Lakes traffic be conducted before further congressional consideration of their imposition on Great Lakes traffic.

Mr. Chairman, in summary, we support the positive approach taken by S. 865 and view this proposal more favorably than the other bills currently pending before this committee. We cannot, however, support inclusion of Great Lakes traffic in any port development bill.

We would be glad to answer any questions concerning our statement and supporting data which you might have.

Senator ABDNOR. Thank you, Mr. Joseph.

I have to ask you all to summarize. We are very interested in your input here. We know of the effect deep water ports has on the coal industry.

Next?

STATEMENT OF LOUIS CARLSON, COCHAIRMAN, TRANSPORTATION COMMITTEE, NATIONAL ASSOCIATION OF WHEAT GROWERS

Mr. CARLSON. Thank you, Mr. Chairman.

Mr. Chairman, members of the subcommittee, my name is Louis Carlson. I am a wheat grower from eastern Oregon, and cochairman of the transportation committee of the National Association of Wheat Growers [NAWG].

I want to thank you for the opportunity to appear before you today to present the views of NAWG on legislation designed to maintain and improve harbor facilities. Wheat growers throughout the Nation agree that ports on all coasts need to be upgraded and maintained to assure continued and competitive exports from the United States.

What concerns us is the method and degree to which the users of harbor facilities will be required to pay for continued maintenance and operation, and deep-draft operations.

The controversy that surrounds the waterway issue is indeed a complex one. Numerous bills have been introduced from time to time that would have been devastating in terms of world grain marketing and balance of payments.

To the best of my knowledge, no credible study has been conducted that would show the accurate impact on individual regions, transportation modes or answer the question on who is actually going to pay the bill and for what projects.

In all candor, these concerns are only a part of the larger issue. If deep-draft legislation occurs under a partial recovery formula, the next step is obviously going to escalate those partial recoveries into full recovery on deep-draft projects and then include shallow draft and new construction costs.

Each segment by itself is quite acceptable on a partial recovery basis. However, the eventual combination of deep draft, shallow draft, new construction and full recovery would have unknown effects that we must address with great caution. We, in the agricultural business, are very much aware of Government deficit spending. We, in agriculture, have been doing it for the last 16 years.

My production costs are $4.80 per bushel while my cash market today is $4.10 per bushel, a 70-cent loss for every bushel that I market in the Pacific grain countries.

The predicted $200 billion national debt must be brought under control, but, Mr. Chairman and members of this committee, I tell you that there is only one segment of our economy today that is functioning with unprecedented efficiency and production output and that is agriculture.

If in some way through a miscalculation the individual who has the incentive to produce is stifled, our total economy will recede into another depression as we have never seen. This history books are full of documentation showing the rise and fall of great societies that took for granted the natural resources of their land.

So we must proceed with great caution when we place taxation upon our basic resources that exceeds the iimits of those resources to pay.

It is not hard to understand why wheatgrowers have interest in the legislation before this subcommittee. Exports account for fully one-fourth of farmers marketing returns and 1 out of every 3 acres produced in this country goes into world trade.

It is of interest to note that of the seven States represented in this subcommittee, the total dollar value of wheat exported from these States amounted to just under $1.6 billion, or 21 percent of all the wheat dollars exported in this country. The dollar amount and the quantity of exports has been declining over the past several years due in large part to the strong dollar, global recession, lagging demand, world supplies, and subsidization of exports by our competitiors.

All of this translates into lower farm income. With the current large world supplies of reduced demand and the fact that the farmer is the price taker, not the price setter, it is evident that any increased transportation costs will further reduce farm income.

International competition is key and any duty, tax, or fee, or other funding mechanism attached to wheat exports and designed to raise revenue for harbor improvements will not be passed onto the importing country but will be shared by the grower.

We fully agree with the sponsors of the legislation that the fees should not be designed to recover the entire cost of port operation and maintenance. Benefits accrue to large segments of this economy which are not direct users of harbor facilities.

For example, every $1 billion of agricultural exports account for 35,000 new jobs.

Mr. Chairman, the wheatgrowers know how hard the members of this subcommittee have worked over the years to form legislation that is fair and equitable. The ad valorem approach, as presented by Senator Hatfield in 865 is by far the best approach so far developed.

We can support this legislation with certain modifications; so long as farm income is not disproportionately affected through the cost recovery structure.

I would be happy to answer any questions that you might have.

Senator ABDNOR. Thank you.

Why don't we go ahead?

STATEMENT OF KEITH J. BUNTING, MANAGER, GOVERNMENT AND PUBLIC AFFAIRS, DOW CHEMICAL CO.

Mr. BUNTING. Thank you, Mr. Chairman.

I am Keith J. Bunting, manager of government and public affairs for distribution of the Dow Chemical Co. I am also chairman of the Waterways and Ports Task Group of CMA, the Chemical Manufacturers Association, and I am speaking on behalf of CMA today.

With me is CMA transportation counsel, Ken Kastner.

CMA is a nonprofit trade association whose member companies represent more than 90 percent of the productive capacity of basic industrial chemicals. The chemical industry's annual exports exceed $20 billion and our imports exceed $9 billion.

Of course, most of these exports and imports are shipped through U.S. harbors. Chemicals are transported both in bulk on vessels that have from 100 to 200 parcel tanks, or as packaged products often in containers.

The value of our bulk products range from approximately $200 to $17,000 dollars per ton. Packaged chemicals can have even higher values. You should also know that approximately 126,000 chemical industry jobs are dependent on our export business, which is subject to very keen foreign competition.

In light of the large volume of chemical exports and raw material imports, a structurally sound channel and harbor system is very important to the chemical industry. Moreover, because our ability to compete with foreign manufacturers of chemicals for world trade often depends on slight variations in transportations costs, it is essential that transportation costs, including the proposed harbor user fees, be necessary and fully justified.

Rather than commenting at this time on specific sections of S. 865 and S. 970, the chemical industry believes that any user-fee legislation must be governed by the following principles. Indeed, we believe that all of these elements are consistent with a true user fee concept.

First, all users of a channel and harbor should pay their fair share of the costs of such use. This would mean that all industries, our naval interests, and any other interests that use our harbors should pay for their proportional share of the operation and maintenance costs of the harbor.

With respect to capital improvements, as opposed to operation and maintenance, a capital improvement similarly should be paid for by its beneficiaries. Thus, for example, if a channel were widened and all users benefited from this, all users should bear the cost.

On the other hand, capital improvements necessary only for defense purposes should be paid for solely by naval interests. Likewise, deepening channels and harbors should be paid for only by those industrial groups and defense interests that require deeper channels and harbors.

Quite frankly, this would mean that the chemical industry generally would not pay for deepening channels with respect to chemical exports since most chemical parcel tankers and package vessels can ransit most ocean waterways.

On the other hand, the chemical industry purchases large amounts of imported petroleum which we use for energy and as a raw material. As such, we would bear, and are willing to bear, the higher cost of petroleum as a result of the user fees that would be assessed on petroleum vessels that require deeper harbors. The point is that the guiding principle for any fair and true user-fee approach is that the user should pay for its use; conversely, if a user group does not need a certain type of capital improvement, it should not be required to pay for it.

Under this same principle, user fees collected from those commercial interests that use, for instance, the Port of Galveston, should not be expended on capital improvements in the Baltimore Harbor. In other words, user fees for capital improvements should be port specific. It is only fair that those that are asked to pay for using a particular harbor should receive the benefits of the capital improvements in that harbor.

The second concept that is crucial to chemical industry support of user-fee legislation, and a concept which again is the only fair and rational approach, is that the amount of the user fee should be based on the tonnage of the cargo, not on the value of the cargo.

The cost of operating, maintaining, or improving a harbor bears absolutely no relationship to the value of the cargo. A 50,000-ton vessel carrying electronic equipment does not cause more wear and tear or require a wider or deeper channel than does a 50,000-ton vessel carrying woodchips.

Wear and tear and capital improvements for all public ways, whether harbors, highways, rail track, or even airports, relate much more directly to the tonnage and size of the vessel, vehicle, rail car, or jet than the value of the cargo. Therefore, we strongly oppose an ad valorem user-fee approach.

A third general principle that should be incorporated into user-fee legislation is that the local port authority, and those entities that will be required to pay the user-fee, should have a major voice in deciding on whether capital improvements are necessary, the type of improvement that should be made, the contracting for the improvements, and the user-fee levels.

We recognize that harbor improvements require substantial expertise and consistency of design. The Army Corps of Engineers is uniquely capable in these areas and therefore it, too, should have a major role in harbor design and planning. But when funding of capital improvements substantially shifts from the Federal Government to the users, those users should have a greater voice in that for which they will be paying.

In addition to these three general and crucial principles, we would like to offer the following more detailed points:

First, all presently authorized capital improvement projects, whether partially or fully funded or under construction, should be completed without a user-fee assessment. All new user-fee capital improvements should begin promptly after they are authorized; for instance, within 2 years after the construction permit process has begun.

Finally, moneys collected from the user fees should be placed into a trust fund rather than into a general revenue pool where they could possibly be diverted for other uses.

Thank you for considering our remarks. The chemical industry supports the goal of achieving legislation that promotes our harbors and channels.

We will be happy to respond to your questions.

Senator **Abdnor**. Thank you, gentlemen, for appearing here together. It gives you some idea of the differences that you have in arriving at some kind of legislation for deepwater ports.

We were certainly willing to meet and go to Europe last year and look at dams and talk about how many deepwater ports we need.

We felt we had a pretty good bill last year and we got as far as the Senate floor with it. We had strong support in committee.

It was set aside on the floor. I don't know what is going to happen this time. We have had considerable testimony on this subject last week and today. But, again, we do have differences.

We will digest your testimony. We may have questions that we would like to submit in writing.

We are past the hour of 12. We can sit here and talk about this for a long time. If necessary, we may even have to have you back. I hope not. We don't have that much time.

We thank you for coming today and we were happy that we were able to work you in. We have your statements for the record and I know this is a very important subject for you.

Thank you for coming.

[Whereupon, at 12:05 p.m., the committee recessed, to reconvene at the call of the Chair.]

[Statements supplied for the record follow:]

NATIONAL COAL ASSOCIATION

Statement

of

Mark R. Joseph
President
Anker Energy Corporation

On Behalf Of The

National Coal Association

And The

Coal Exporters Association

On

THE NEED FOR PORT DEVELOPMENT LEGISLATION

Before the

Subcommittee on Water Resources

of the

Committee on Environment and Public Works

United States Senate

Washington, D.C.

June 27, 1983

Thank you very much, Mr. Chairman.

Members of the committee, I am Mark R. Joseph, the President of Anker Energy Corporation in New York. My firm is both a trader and a producer of coal, exporting three million tons a year and producing two million tons annually.

I am chairman of the Coal Exporters Association of the United States, whose members are responsible for more than 90 percent of the nation's coal exports. I am also a director of the National Coal Association, whose members include coal producers, transporters and sales companies among others who are associated with the coal industry.

On behalf of these two organizations, I commend the Chairman and this Committee for its leadership over the past years in drawing attention to the need for a port improvement policy, fostering much needed debate on the various and sometimes controversial issues which surface when considering requirements to both maintain and improve our coastal port system in order to maintain and increase the United States position in world trade, and finally in holding these hearings on compromise port development proposals which have emerged this year after months of diligent work. We appreciate the opportunity to appear here today to present our views and to offer qualified support for S.865 now being considered by this committee.

I. INTRODUCTION

In recent years, the world coal market has displayed explosive growth as a consequence of pricing actions taken by petroleum exporting countries.

The effects on the United States have been significant. Our global market for coal has changed dramatically in nature and size. Where once it was a stable, constant consumer of metallurgical coal for use in steel production, it is now, in addition, a vigorous consumer of steam coal for use principally in electric power plants and certain other industries.

Our coastal ports are a vital part of the transportation chain connecting the nation's coal mines with utility and steel plants abroad. As late as 1979, this country was quite capable of meeting all anticipated coal demand, with no doubt about its ability to handle all projected growth. The nation's ports were well equipped to deal with the 45-55 million tons of met coal being shipped overseas each year.

That changed with the advent of the global steam coal market. Three years ago, the fact that our ports are a weak link in the mine-to-market chain was amply demonstrated when colliers waited weeks on end to load coal for overseas customers.

That weakness cost us the export of 10-15 million tons of coal in 1980, and a similar amount in 1981, and lost revenue of over $1 billion. It has the potential of being even more costly in the future.

Strengthening this link, improving the country's ports and harbors from which coal is exported, is vital to the future utilization of American coals abroad and to the energy security and stability of our trading partners overseas.

Significant strides have been made in improving the efficiencies of our ports. Because of this progress, and the relatively weak market for coal worldwide, which has resulted in lower traffic at some ports, there has been less pressure for rapid improvement and expansion of coastal loading facilities and for dredging harbors and channels to depths necessary to accommodate an expanded and competitive coal trade.

But the United States cannot sit back and assume because there are no long lines of vessels off our East Coast that all is well. We must be diligent in assuring loading capacity adequate to meet projected demand. At the same time, Congress should act without further delay to authorize deeper drafts at selected harbors on the East, Gulf and West coasts. The long-term prospects for coal exports are extremely good. If action is not taken soon, I'm afraid that the export market of today will be the export market of 1990, and that the United States will miss its golden opportunity to capture a maximum share of increasing international coal trade.

The United States coal industry is in a unique position to take advantage of the new opportunities afforded by increasing demand for coal. But the only way that we can play a major long-term role in the market is to be a very competitive supplier -- to have the ability to deliver our coals to Rotterdam, to France, to Japan or other markets at a price comparable to that of similar coals delivered to the same ports from Australia, Canada or South Africa. The only way that U.S. coal can be competitive abroad -- be the long-term contract supplier of coal, not the spot supplier -- is to assure adequate coal loading facilities and terminal capacity at coastal ports; and to deepen selected harbors on the East, West and Gulf coasts to allow the use of larger, more cost effective bulk colliers not now able to call at any port in the United States.

Mr. Chairman, this morning I want to stress these basic facts. If anything, the world coal market is more competitive today than at any time in recent history. More than ever, the need for a competitive transportation system to hold down the delivered price of American coal is necessary if we are to keep our current markets and also increase our share of the world market. Furthermore, the requirement that the United States deliver coal energy to overseas customers at the most reasonable price possible is even more compelling than a year ago, for it is United States coal that serves as the determinant in world coal market pricing. And coal competes with oil and gas. So if coal is to be a viable fuel source, our prices must be kept reasonable.

I want to expand on these points by reviewing changes in the outlook for the world coal market that have occurred over the past year or so, by summarizing the progress which has been made by the private sector in developing a coal exporting infrastructure in the United States, and finally by stating again our request that Congress move expeditiously to authorize the deepening of coastal ports and channels wherever such projects are economically viable. If the provisions of S.865 are amended to exclude Great Lakes traffic and with some modifications which I will suggest, S.865 will accomplish this important task.

II. THE WORLD COAL MARKET

A. TRENDS IN COAL USE AND TRADE

Coal use in the major industrialized nations (the OECD nations) increased by over 6 percent per year 1979 - 1981 due primarily to the substitution of coal for more expensive and unreliable oil in utility boilers and major industrial installations. The share of coal generated electricity in OECD nations jumped from

38 percent of total in 1978 to almost 45 percent of total in 1981.

This sharp increase in coal use(almost 100 million short tons outside of the United States) caused a corresponding jump in coal traded in the world market. Demand for steam coal increased by over 50 percent in just 18 months time (1979 - 1981), total coal traded increased by over 53 million short tons or by almost 20 percent during the same time period.

One reason for this sharp increase in coal use and trade is well documented and will not be repeated here. The real question to be answered - will the trend continue?

Forecasts made in the shadow of the 1979 increase in oil prices said yes - demand for steam coal in the world market would increase at a 7-12 percent annual rate through the end of the century. Forecasts made today, looking at the realities of lower economic growth, higher energy prices, increased energy efficiencies and conservation suggest otherwise. GNP growth rates in OECD Europe are expected to average 1.9 percent through 2000 (versus an average 4.7% 1960 - 1973) and in Japan will average 3.3% (versus 10.4% 1960 - 1973 and 4.4 percent 1974 - 1981.) Average increases in energy use will be marginally lower.

Preliminary forecasts prepared by the Export Subcommittee of the National Coal Association Economics Committee expects that steam coal use will increase at less than 6% per year and import requirements will increase, on an average by just less than 7 percent per year through 1995. Import demand should reach a total of 160 million tons in 1985, 234 million in 1990 and 312 million in 1995. (These forecasts, discussed in Appendix A are approximately 12% lower than the forecasts of approximately 6 - 8 months ago.)

Most of the increase in demand for steam coal will be for use in utility boilers. Industrial use of coal will not increase appreciably before 1990. Demand for imported steam coal will be greatest in Europe.

Demand for metallurgical coal on the world market will stabilize at approximately 155 million tons annually.

WORLD COAL TRADE --- 1980 - 1995

(million short tons)

	1980	1985	1990	1995
STEAM	111	160	234	312
MET	155	155	157	160
TOTAL	266	315	391	472

B. THE UNITED STATES' SHARE OF THE WORLD COAL MARKET

The United States has been a prime beneficiary of the increase in demand for coal due to the initial inability of indigenous (EEC) producers to keep pace with the rate of increase in demand, and the short term unavailability of coal from competing sources due to political and labor problems. The U.S. coal industry had (and still has) the capability to meet any sudden increase in demand as the industry is operating at far less than productive capacity.

Although extreme problems were experienced in the transportation and port sectors, the coal industry had no difficulty in increasing steam exports overseas from 2.6 million tons in 1979 to 33 million tons in 1981 and simultaneously increasing met coal shipments from 43 million to 60 million tons.

Despite its many advantages, the role that the United States will play in the future world coal market depends upon many factors including the supply capability of competing (and less expensive) coal exporting countries and the capability of the U.S. exporter to deliver a competitive product.

As discussed in Appendix A, Canada, Australia and South Africa have expanded production and export capability rapidly and, given reduced market demand, will possibly be in a position of excess production capacity for some time.

It will be difficult for the United States to meet competitor's prices. But, despite this fact, coal will be purchased from the United States for security, political, reliability, diversity of supply reasons.

The current preliminary forecast is as follows:

U.S. COAL EXPORTS OF COAL, 1985, 1990, 1995

(million short tons)

	1980	1985			1990			1995		
		Low	Med	High	Low	Med	High	Low	Med	High
Steam	28	32	40	47	44	56	69	56	80	98
Met	63	50	56	67	50	60	69	50	60	69
TOTAL	90	82	96	114	94	116	138	106	140	167

As can be seen, given certain conditions - poor economic conditions, low growth in the use of coal, availability of coal from competing nations and high cost of U.S. coal due to high rail costs, high shipping costs - exports of U.S. coal could just reach 1981 levels by 1995.

On the other hand, if economic conditions improve, and coal use increase, the U.S. could increase exports to as much as 167 million tons by 1995. But, given the expected supply capability and price structure of competitive countries, attainment of these higher forecasts will require that costs of coal from the United States can be competitive or nearly competitive through stabilization of rail rates and whenever possible reduction of costs of ocean shipping. Additional discussion of the markets for U.S. coal is found in Appendix A.

III. PORT CAPACITY AND THE NEED FOR DEEP DRAFT CHANNELS IN THE UNITED STATES

If current coal port loading capacity, and the capacity additions already under construction are combined, it is evident that there will be enough total coal port loading capacity to handle expected coal trade at least through 1990. (Although it must be said that some areas should experience problems.) Current nominal loading capacity is approximately 380 million metric tons per year, discharge capacity about 423 million metric tons per year. (Current trade approximates 280 million metric per year.)

Loading and discharge capacity under construction will increase annual capability by over 1/3. (See data in Appendix B, tables 1 - 4 and 8 - 13).

Channel depths differ at each port location. Each geographical exporting and importing area, however, with the exception of the United States, has access to at least one coal loading or discharge facility or deep (more than 45 feet) water.

A. THE CUSTOMER COUNTRIES

1. EUROPE. There are at least 48 coal discharge ports in continental Europe with more than 230 million metric tons discharge capacity. Seven of these ports - located in Denmark, France, the Netherlands, the United Kingdom, Belgium, Italy, Spain are now capable of handling vessels greater than 100,000 dwt. Additional discharge capacity is being constructed in each of these countries (except in the U.K.) and in West Germany, Finland, Norway and Portugal. By 1990, coal customers in Europe will be served by well over 100 million tons discharge capacity (for both steam and met coal) at ports capable of using deep draft vessels without the necessity of dredging. Latest estimates show that about 60% of coal received in Europe will be in these large vessels.

Of course, to fully utilize many of these ports, it will be necessary to develop a more extensive inland distribution system, but channel depths will not be an inhibiting factor at these ports.

2. JAPAN, KOREA, TAIWAN. There are at least 20 coal discharge ports in Japan, 3 in Korea and 4 in Taiwan with more than 130 million metric tons discharge capability. Japan has 13 port areas which can handle vessels greater than 100,000 dwt (mostly for met coal and at steel mills), but Korea and Taiwan have none. Japan plans to add several million tons discharge capacity for steam coal - all at locations capable of handling

large vessels; Taiwan is in the process of completing new discharge facilities at Kashsuing, with a depth of 50 feet.

3. LATIN AMERICA. Latin America is a growing market for U.S. coal, especially for met coal. Although there are now no receiving coal ports capable of handling larger vessels, Brazil will have two discharge facilities on line by the end of this year that will be capable of receiving vessels of more than 140,000 dwt.

B. THE COMPETING COUNTRIES

1. AUSTRALIA. Australia can now load vessels of over 100,000 dwt at one location, Hay Point in Queensland, which has 18 million metric tons coal loading capacity. (Table 9 - Appendix B). Dredging projects and new loading capacity will increase loading capability with deep draft access in Queensland at Hay Point, Gladstone, and Bowen. There are plans for deep draft access at both Newcastle and Port Kembla in New South Wales, but completion dates are uncertain.

2. SOUTH AFRICA. South Africa's major coal port, Richards Bay, is on deep water and can now load vessels up to 170,000 dwt. The current 23 million ton capacity is slated to be increased to almost 60 million tons by the early 1990's.

3. CANADA. Canada now has one port area, Roberts Bank in Vancouver, which can load approximately 20 million tons of coal per year. Expansion of this facility is planned, and, if demand warrants, a loading facility at Ridley Island (British Columbia) will be completed with similar deep draft capability.

In eastern Canada, mid-stream transshipment operations have been successfully conducted at the Sept. Island, Quebec location in the St. Lawrence Seaway.

4. COLOMBIA. A new competitor, Colombia, will enter the market in the mid 1980's. The port, at Bahia Portete, will be capable of loading 150,000 dwt vessels.

C. THE UNITED STATES

The United States now has more than enough coal loading capacity to meet future export demand into the 1990's. Existing loading capability and capacity now under construction is summarized below:

U.S. COAL LOADING CAPACITY [1]
(million of tons)

Region	Existing	Effective Capacity Underway [1]	Estimated Total Effective Capacity by 1987
East Coast	123.4	25.0	148.4
Gulf Coast	110.0	26.0	136.0
West Coast	9.0	1.0	10.0
Great Lakes	79.4 [2]	--	79.4
TOTAL	321.8	52.0	373.8

1/ For purposes of this analysis, includes only new capacity known to be under construction.

2/ Total includes terminal facilities used for interlake domestic, Canada, and overseas foreign shipments. These amounted to 34.6 million tons in 1982.

SOURCE: Maritime Administration, U.S. Department of Transportation and adjusted by NCA.

Although loading capacity is sufficient, draft is not. With the exception of Los Angeles/Long Beach, there are no coal ports with drafts greater than 45 feet. This gives the United States a unique place among coal exporters -- the only exporting country to be without a major deep draft coal port accessible to the major coal fields.

There are proposals to dredge Baltimore to 50 feet, Savannah, Georgia to 42 feet, Hampton Roads, Mobile and New Orleans to 55 feet. However, as is discussed in Appendix D, the lengthy political approval process will ensure that no coal port will be able to accept fully loaded vessels of the 100,000 dwt or larger class before the early 1990's.

IV. THE TREND TOWARDS LARGER VESSELS

Approximately 80 percent of the coal traded on the world market is transported by sea. One hundred percent of the coal shipped to overseas destinations from the United States is seaborne. As costs of transportation can represent as much as 40 - 50 percent of the delivered cost of coal, it is important to minimize the transport cost whenever possible.

A. THE ECONOMICS OF DEEP DRAFT VESSELS

The larger the vessel used, the lower the actual per ton shipping cost:

Vessel Size (dwt)	Total Annual Costs	Daily Cost per Ton
	($mm)	($/ton)
60,000	$6.12	$0.287
120,000	8.06	0.189
170,000	9.63	0.160
250,000	11.67	0.131

These economies of scale are, of course, reflected in total voyage costs on selected routes. As shown in Appendix C, Table 4, substantial cost savings can be gained by using a 120,000 dwt ton vessel, or a 170,000 dwt vessel as compared with a 60,000 dwt collier. To summarize the estimated differences from East Coast port locations:

Size of Vessel (dwt):

	60,000 $/ton	120,000 $/ton	savings	170,000 $/ton	savings
U.S. East Coast to:					
North Europe	$11.50	$8.50	$3.00	$7.50	$4.00
Mediterranean	$13.60	$10.00	$3.60	$8.70	$4.90
Japan	$28.20	$20.00	$8.20	$17.50	$10.70

SOURCE: See Table 4, Appendix C

Although these cost (not charter rate) data will differ from those of other sources, the trend is illustrative of the fact that larger vessels cost less per ton shipped. It is also clear that there is a diminishd rate of savings as the vessel gets larger. For example, shipping coal to North Europe in a 120,000 dwt versus a 60,000 dwt vessel saves $300 per ton in cost or about 30%. But to go further - to use a 170,000 dwt vessel saves only an additional $1.00 - a savings which can be offset by user charges, additional loading time, transsshipment costs, etc.

These factors, coupled with lack of ports at which vessels over 150,000 dwt vessels can call, difficulty of obtaining backhauls in extremely large vessels, would indicate that the practical limit of vessel size in the coal trade will be in the 100,000 - 150,000 dwt class. In fact, this is borne out by existing bulk fleet and new build numbers. At the end of April 1983, of 209 bulk vessels of size greater than 100,000 dwt in service, 170 are between 100 - 150,000 dwt. Of the 29 new builds for delivery before 1985, 18 or 62% are in the 100 - 150,000 class.

Actual charter rates, of course, differ from the costs referenced in this paper. Rates are determined by vessel supply and demand and can, literally, differ by the day. The per ton rates for larger vessels are, however, usually lower than rates for the smaller, although exact differences can vary widely.

B. VESSEL SIZES USED IN THE COAL TRADE

Due to the cost factors cited above, coal is being shipped in larger vessels. In 1971, only one percent of seaborne coal was on vessels larger than 100,000 dwt. In 1981 (and it can be assumed in 1982), 30 percent of the trade was shipped in these larger vessels. (Data in Appendix C, Tables 1 and 2).

It can be concluded that this trend will continue. In 1980, H.P. Drewry Shipping Consultants forecast that in 1985, 25 percent of the ocean ton-miles attributed to steam coal would be in vessels greater than 100,000 dwt; 44 percent in 1990, 52 percent in 1995 and 58 percent in 2000. A more recent estimate compiled by Cargo Systems Research Consultants confirms the forecast. According to CSR, 62 percent of the total coal imported by Western Europe in 1990 will be in vessels greater than 100,000 dwt and 72 percent by 2000. These observations are repeated in almost every comprehensive report on the future of coal trade, including the IEA's annual coal review.

As discussed earlier in this report, there is port discharge capacity in the import countries to handle these vessels (although terminal capacity will have to be upgraded in the 1990's) and, with the exception of the United States, there is port loading capacity on deep water in coal exporting countries. Further, port capacity at deepwater ports in Australia and Canada is being upgraded to increase annual thruput.

C. THE ECONOMICS OF ALTERNATIVE LOADING TECHNIQUES

It is possible to utilize large vessels without full access to a shore side loading (or discharge) terminal actually on a channel of sufficient depth to handle a conventional carrier.

The most popular and readily available option is "topping off." A large vessel partially loads at the coal pier and then moves to deeper water off shore where smaller, self unloading feeder vessels "top off" or complete the cargo loading.

This type of operation could be employed in several places for example, the Delaware Bay, the Lower Mississippi River, outside Mobile Harbor and could allow shipment of coal from several inland mine locations. The cost of the operation will differ greatly at each location. For example, if an operation is conducted in the Delaware Bay, the operation is completely within

U.S. waters and the "feeder ships" must be American flag. This increases costs and may, or may not, be economical. An operation in the Gulf may be far enough out to allow the use of foreign flag vessels, thus lowering costs.

Each operation must be analyzed on its own merits. Cost data are not available, but reports indicate that costs could be in the $3 - $5 per ton range. This would affect the savings associated with larger vessels, but can certainly be cost effective in individual circumstances.

A discussion of other alternative loading techniques is found in Appendix C.

V. LEGISLATIVE PROPOSALS TO IMPROVE COASTAL PORTS

It is clear from the above discussion that in the future coal trade, larger vessels will be the rule and not the exception. It is equally clear that although the IEA Coal Review of 1981 states that "the loading of larger vessels at selected ports in the United States holds the promise of substantially reducing ocean transport costs," the United States remains the only exporting country that cannot readily handle these larger and more cost efficient vessels. What can be done to change this?

Dredging has traditionally been the work and financial responsibility of the federal government. Costs incurred for annual operation and maintenance have, likewise, been funded through the Federal Treasury.

Due to the high costs involved in this work, numerous proposals have been made to require the individual port or port user to pay part or all of the costs through user fee mechanisms.

Although legislation was discussed in the last Congressional session, due to various and sometimes conflicting, interests involved, no legislation was passed.

This year after much work and effort, two compromise proprosals are before this Committee:

- S.865 introduced in March by Senators Hatfield, Byrd and Warner, which includes federal-local cost sharing of construction and dredging costs based on a sliding scale ranging from a 20% local share at harbor depths of 60 feet or more and would provide a sharing of annual O&M charges on a 40% local/60% federal basis.

The local share of O&M charges would be recovered through a nationwide uniform fee based on cargo value which would be phased in over a three year period with a maximum fee which would be $0.0006 per dollar value.

- S.970 introduced in April by Senator Moynihan, which includes federal-local cost sharing of construction costs -- users would pay 50% of costs if depth is less than 45 feet and 75% for those greater than 45 feet and a sharing of O&M costs on a 50-50 basis. The local share of O&M charges would be recovered through a nationwide uniform tonnage fee which would be phased in and would approximate 16 - 17 cents per ton by 1987.

VI. NATIONAL COAL ASSOCIATION SUPPORTS S.865 WITH MODIFICATIONS

The need for deep draft ports has been evident for several years,but the costs both in money and time have been recognized as well.

National Coal Association was among the first to acknowledge that, despite the need, our coastal ports would not be dredged without agreement on the part of the port and the user to pay at least part of the projects costs. Almost two years ago, the NCA Board adopted a position which would be supportive of legislation authorizing dredging projects to be paid in full or in part by local (port and user) interests.

But, our support for harbor improvements funded at least in part by non federal interests was contingent on inclusion of legislative reforms to speed the environmental review and permitting process which now result in an unacceptable 20 plus year completion schedule for any project.

The NCA Board of Directors reaffirmed that position in mid June. Further, the Board stated that if necessary to accomplish this needed dredging work, the NCA would accept a minimal national uniform user fee, levied on traffic using East, West and Gulf Coast ports to fund a small percentage of annual operations and maintenance costs. The NCA does not support imposition of these fees on Great Lakes traffic.

Favorable action on S.865, incorporating the modifications discussed below, would:

- give a clear signal to our customers abroad that the United States is making every attempt to be as competitive in the world coal market as possible through initiation and implementation of a port improvement policy.

- allow economic projects to proceed as quickly as possible by expediting the time required to authorize, review, permit and fund these projects;
- assure the availability of one or more deep draft ports by the early 1990's.
- give individual ports the flexibility required to tailor improvement projects and payment terms to best meet their own commercial needs;

We believe, however, that S.865 would be a stronger bill with certain modifications.

New Construction/Navigation Improvements

S.865 provides that the costs of port dredging would be shared between the federal government and the local port on a sliding scale - the deeper the draft, the greater the local contribution.

The port would propose a project to the Corps of Engineers for consideration along with other proposals throughout the nation. Congress would in turn act on the package of proposals prepared and submitted by the Corps of Engineers. Funds would be appropriated from the National Port System Trust Fund.

The port would include in its proposal an agreement outlining repayment terms.

If, however, a port did not wish to take advantage of the federal contribution, the port could proceed with improvement projects independently after agreeing to fund completely both costs of construction and costs of additional operation and maintenance.

This is a positive approach to review authorization and funding of proposed projects. It is especially commendable that:

- ports wishing to bear the full cost of a project can proceed on their own, but that

- ports wishing to share costs with the Federal Government can have the assurance that the Federal Government will advance 100% of the needed funds.

But, there are several points that should be raised:

- The economic and other tests should be sufficiently strong to ensure that, in view of limited funds, funding will be available to the most economically viable projects on a priority basis without regard to geographic location;

- Language should be included to give individual ports wide discretion on the way that their share of the project construction costs are funded, as the port may decide that it is not in their own commercial interest to impose a user fee. If, however, the port should impose user fees, (port specific), S.865 should be modified to instruct ports that such fees should be imposed uniformly on all foreign commerce using the same level of service and should not be imposed without adequate public hearing.

- Language should be included that specifies full federal advancement of funds, but should provide that the pay back period does not begin until completion of the project.

- Full project fund appropriation should be automatic upon congressional authorization of the project. Annual appropriations should be avoided.

Operations and Maintenance Costs

S.865 would impose a nationwide user fee on the value of cargo to fund 40% of the annual costs of operation and maintenance at our coastal ports and on the Great Lakes. The fee would be imposed on all export and import traffic - as well as coastwise traffic, would be phased in over a three year period and would be capped at a maximum 0.06% of the dollar value of the cargo.

This positive approach based on cargo value, recognizes:

- that the Federal Government has a vital and a continuing role and interest in maintaining this nation's port system;
- that if a local share of O&M costs are necessary, a uniform fee spread across all commodities and all traffic is the most equitable approach and can be imposed with the least problems and traffic pattern disruptions;
- that bulk commodities are extremely sensitive to market prices and can bear only a small additional charge without affecting their competitive position in the world market;
- allows the actual fee to vary with the market price.

We do have several concerns.

- although we recognize the necessity for the user to bear some share of the O&M costs, this share should be minimal, it would be desirable if the costs borne by the user were less than proposed in S.865, but should certainly not be more - either as a percentage of total costs covered by the user fee or as an absolute value, i.e. 0.06% per dollar value.

- the world market for United States' coal - and indeed all export commodities, is very weak and can stand no additional costs. In recognition of this, the actual imposition of the phase in of these user fees should be delayed as long as possible.

Finally, these user fees should be limited to traffic on the East, West and Gulf Coasts and should not be imposed on Great Lakes traffic.

The Great Lakes present certain inherent problems which should be thoroughly studied before any fees are placed on traffic moving through these ports. Any user fee would place U.S. ports at a distinct disadvantage with Canadian ports and could cause traffic diversion and contribute to an ever higher level of unemployment in the already economically depressed Mid West.

Further, foreign steel and iron ore would gain significant advantages over American steel and iron ore. As pointed out in statements filed with the House Committee on Merchant Marine and Fisheries:

If S.865 or S.970 (the Moynihan Bill) were to be enacted, the following situations would exist on the Great Lakes:

1. Foreign steel would gain a price advantage over American-made steel of anywhere from approximately 55 cents to $2.15 a ton.

2. Foreign iron ore would gain a price advantage of approximately 27 cents to 67 cents a ton over iron ore in the Great Lakes region -- namely iron ores produced in Minnesota and Michigan.

3. Canadian grain shippers from the head of the lakes at Thunder Bay, Ontario, would have their transportation costs reduced by anywhere from 13 cents to 19 cents a ton. This gives them an added competitive advantage on world markets over those U.S. grain shippers using our inland waterway systems -- the Mississippi, for example.

4. All foreign shippers of goods into or out of the Great Lakes would have reduced costs of transportation while all domestic shippers of goods from one Great Lakes port to another would have their transportation costs increased.

We would, therefore, suggest that a complete study of the effects of user fees on Great Lakes traffic be conducted before further Congressional consideration of their imposition on Great Lakes traffic.

Mr. Chairman, in summary, we support the positive approach taken by S.865 and view this proposal more favorably than the other bills currently pending before this committee. We cannot, however, support inclusion of Great Lakes traffic in any port development bill.

We would be glad to answer any questions concerning our statement and supporting data which you might have.

APPENDIX A

FUTURE COAL TRADE

Forecasts completed in late 1979 and early 1980, immediately after the Iranian oil crisis and sharp increases in the price of oil, were very optimistic about future growth in the use of coal.

The oft cited "World Coal Study", released in May 1980, forecast world steam coal import requirements in 1985 as 120-175 million short tons[1/] and in 2000 as 345 to 782 million tons. The Interagency Coal Task Force report - published in January 1981, was equally as optimistic - 150 million to 176 million tons would be imported in 1985 and 470-565 million bytons the year 2000.[2/]

National Coal Association was not immune to the aura of optimisim. In 1981, NCA released a long range forecast paralleling the Interagency Task Force Report.[3/]

The experience of 1979, 1980 and 1981 suggested that these forecasts would indeed become reality. Coal use increased rapidly in Europe especially, due to utility conversions, and increased industrial and home heating use. Demand for steam coal on the world market increased by 50 percent in just 18 months.[4/] Total coal traded increased by almost 20 percent in the same time (Table 1).[5/]

The United States was a prime beneficiary of this increase. Steam coal shipments to overseas destinations increased from 2.6 million tons in 1979 to 33 million tons in 1981. Simultaneously, exports of metallurgical coal soared from 43 million tons to 60 million tons (Table 2). The reasons for the increase in trade and the very important role that United States coals played in meeting this increase are well documented and include:

- an increase in the demand for steam coal due to the aforementioned short term decision to convert utilities from oil firing to coal and to quickly convert large industrial fuel users to coal wherever possible, coupled with;
- the inability of domestic, i.e., EEC, producers to keep pace with increases in demand;
- unavailability of coal from Australia and Poland due to strikes and political problems which forced a demand for "replacement" coal.

The rate of increase in demand for coal in the world market and from the United States slowed appreciatively in 1982. World recession, coupled with increased energy efficiencies slowed the increase in use of electricity; steel and thus coke production declined, oil became readily available and the immediate urgency to convert industrial boilers (and additional utility boilers) disappeared. Coal traded on the world market did not increase in 1982 and is expected to decrease in 1983.[6/] Simultaneously, new coal production and transportation infrastructure planned and started during the "Boom of 1980" began to come on line. Australia and Poland returned to more normal production levels.

The resulting supply glut on the coal market and resultant price pressures, have caused coal producers, transporters, port authorities to relook the future for coal use and trade and to reconsider expansion and investment plans made in the hayday of 1980.

In the future, overall demand for energy will not increase at the same high rates as in the past. Structural changes in energy economics, increased efficiency in energy utilization and conservation practices have caused a drop in the amount of energy required to produce each unit of GNP (or GDP). The "total energy requirement per unit of GNP" ratio has fallen 13% since 1973 and is expected to decline another 10% by 1990.[7] At the bottom line, when the world economy begins to improve, energy consumption - and thus demand for fuels including coal - will not increase apace.

What does this mean for the future of coal trade - and most specifically for the outlook for exports of coal from the United States.

The NCA Economics Committee is now revising its long range forecast taking into account lower economic growth, increased efficiency in use of energy, and availability of oil over a wide price range. The following discussion is based on this unpublished work in progress.

METALLURGICAL COAL

The overall demand for met coal on the world market will remain stagnant through 1995. Lower demand for steel, technological advances in the coke and steel making processes (which lowers the amount of coal required per ton of steel) will combine with an increase in the use of steel substitutes to cause a decline in the demand for met coal in the industrialized traditional steel making countries. Construction of steel production facilities in developing countries (and thus a requirement for coking coal in these areas) will almost offset the aforementioned decline.

Met coal traded on the world market is expected to stabilize at about 155 million tons annually with a decrease in imports by the EEC countries and Japan, an increase by South American countries, other Europe (non-EEC) and in other countries such as Korea. The United States share (33%) of this market is expected to remain about the same with an expected shift in destinations. Japan, although always an important factor for the United States in this market is expected to average about 15-17 million tons per year (although as in the past, there will be years in which the Japanese require more coal).

Met coal will continue to be shipped overseas from Hampton Roads, Baltimore, Mobile, Philadelphia. We do not expect more than 1 million tons per year to exit via West Coast ports, or in quantity from other ports.

STEAM COAL

As discussed in an earlier section of this report, optimistic forecasts of rapid growth in the use, and thus the trade, of steam coal have been used as the basis for ambitious expansion plans in the coal fields, by railroads and barge lines, by the ports.

Although one must avoid the whoop and moan school of forecasting (and right now it is easy to "moan"), a realistic look at demand for steam coal over the next 12 years shows a very different picture than that painted 2-3 years ago.

Due to factors already cited, slower economic growth, a decline in the rate of growth in the use of energy and thus electricity, increased efficiencies in energy and fuel utilization, conservation, availability of oil, natural gas and nuclear power, demand for coal to use under utility boilers will increase at a slower rate than previously expected.

Beyond use of coal in cement plants which is already an accomplishment, the rate of increase in demand for use of coal in industrial boilers is in question. As a recent IEA study[8/] pointed out:

> "The potential for coal use in industry is much greater than realised, but there are formidable obstacles to be overcome including:
>
> - a slow turnover in the relatively new stock of boilers, now oil and gas;
> - the impact of the recession on business activity combined with conservation and lack of financing makes near term conversion to coal less a priority;
> - coal boilers are more expensive than oil or gas, and although fuel is cheaper, handling and waste disposal is a greater problem.
> - in today's economy, playback is too long for most industrial users, especially given today's oil-coal price spread;
> - the infrastructure and distribution system to serve small users is not yet in place."

This essentially means that, given business as usual with no government incentive, coal use in industry will remain relatively flat through 1990 and then increase at a relatively slow pace through 1995.

Taking these factors into account, the NCA Economics Committee has revised its estimates of demand for imported steam coal downward to 160 million tons in 1985 (as opposed 175 millilon in the interim forecast given the Board in March. 1983 and 178 million tons in January, 1982), to 234 million in 1990 (the comparable figures are 243 million in March 1983 and 300 million a year ago) and 312 million in 1995. The Committee's current (unreleased) numbers are in Table 3.

(The sharpest revisions have been made in estimates of steam coal demand in Pacific Rim nations where we have dropped 1990 estimates from 105 to 59 million tons. The comparable European revision went from 165 to 135 million tons.)

The share of this market actually filled by the United States depends upon the supply capability of our competitor countries. But, as the high cost suppliers, it is a safe assumption that the United States will be the exporting country most affected by the reduction in forecast steam coal demand during this period. In a period of oversupply, higher costs offset the natural advantages the United States has - a reserve base, a competitive industry, high quality coals, and stability of supply.

The United States has not gained many long term contracts to supply steam coal in Europe (and even fewer in Japan), and uncertain policies on transportation costs, i.e., rail, and port improvements are giving the customer an excuse to delay commitments. Coal is and, through 1995 will be, available from lower cost suppliers meaning the U.S. will, in all probability, remain the swing coal supplier for the rest of this decade and into the next.

COMPETITION IN THE MARKET

A prime determinant of the U.S. participation the world coal market - both met and steam - is the supply capability of competitor countries. As mentioned, an ample supply of coal will be available at least through 1995 from Australia, Canada, South Africa and Poland. Columbia and China will participate in the market in the mid to late 1980's.

Australia: In the last decade Australian coal exports have increased from a minimal level to become the second largest coal exporter, after the U.S. Although most of the current coal exports are for metallurgical requirements, Australia is capable of participating strongly in the world steam coal market. Australian coal reserves are favorably located in the densely populated east, with geological characteristics encouraging development at relatively low costs. Australia exports more coal than is consumed domestically, unique among exporters and could indicate a potential limit on total exports. Most export mines are modern, highly efficient operations. The sharp growth of the export sector has strained capital development and improvements are required for substantial expansion of infrastructure, however, prospects are good that the Australian coal industry, supported by foreign investment and positive government interest can participate vigorously in the growing coal trade. The unique labor situation has produced periods of labor curtailment for political, economic and jurisdictional reasons indicating coal exports may be vulnerable to this problem in the future.The Australian coal industry is heavily dependent on the export trade and is particularly vulnerable to union strike activity.

Due to the proximity to the Pacific Rim countries, Australian coal has dominated this region. However, increased requirements for a more diverse source of supply, particularly in Japan, could limit coal growth. The Australian coal exports to Europe have been severely impacted by the long distance and high freight costs. Large bulk carriers have reduced these transport costs. Australia will continue to be the major coal supplier to the Pacific region with reduced exports to Europe for the next decade, with exports in the 100-120 milliion ton range in the early 1990's.

Canada: Canada is an old coal producer, but a relatively new and agressive exporter. The main coal resources in Canada are located in the west, limiting their primary market to the Pacific Rim. Surface transport costs could be substantial, however the new Robert Bank Coal port near Vancouver has capacity for 150,000 ton vessels.

Sourt Africa: South Africa has vigorous coal economy and the only large scale coal conversion program in operation, the SASOL project. Although the primary market is for domestic consumption, the export sector has expanded vigorously due to low costs of production and excellent port infrastructure. The potential for political change in South Africa could result in concern by potential consumers in long term supply security. Coal export levels are determined by the government but are now limited by port capacity. The Richards Bay coal port, a modern efficient facility, is now expanding to 45 million tons per year capacity and could go to 80 million tons by 1995.[2] Africa will continue to be the low priced supplier of international coal.

Poland: Poland is a long term supplier to European coal consumers, but the political problems of the last several years have impacted production and curtailed exports, raising questions of the long term prospects for this country. For the mid-term, exports to Western Europe may be limited by reduced production, increased internal requirements and demand from other Eastern European Countries, however, Poland will aggressively market coal in the Western European area with expectations of returning to a 25-30 million ton export level by 1990.

Columbia: Columbia contains the largest known coal reserves in South America but currently produces only enough to suit domestic requirements. It has the potential to become a significant participant in the world coal trade as a number of new projects are implemented by 1990. The el Cerrejon project is expected to be operational by mid-decade and already has contacts for the greater percentage of its output.

China: China contains massive coal reserves, unlimited low cost labor, a highly centralized political system and a strong potential market in the Pacific area. However, the coal industry in China will require substantial foreign investment to modernize the infrastructure for mining and transportation. The economy of China is coal based and the primary coal developments would be for domestic requirements, although the export sector could participate in the coal expansion.

SUMMARY

For reasons of supply diversity and supply security, we believe that through 1990 steam coal will be purchased from the U.S. in at least as great a quantity as today - although those purchases may be spot and not long term contract purchases. If cost differentials narrow, through port improvements, lowering of rail freight rates, etc., and/or equity investments are made in U.S. facilities and/or the U.S. exporter reacts innovatively to new market opportunities, an increase in tonnage (not market share) shipments will occur.

Assuming that we maintain market share (low), increase market share slightly (medium) or increase market share by 10 points (high), a possible range of U.S. steam coal exports can constructed as follows:

STEAM COAL TO:	1980	1985			1990			1995		
		Low	Medium	High	Low	Medium	High	Low	Medium	High
Europe	14	18	23	27	27	34	41	36	52	62
Pacific Rim	2	4	6	8	6	9	14	9	15	20
Other	12	10	11	12	11	13	14	11	13	14
TOTAL	28	32	40	47	44	56	69	56	80	96

Actual levels of steam coal exports in any given year depend on a number of factors already mentioned. For example, a sudden change in oil price and availability or coal supply disruptions in Australia or Poland could make the "high" case look low. On the other end, cargo preference requirements, or runaway increases in rail rates could make the low case appear to be high. To put together the forecasts presented above, in 1985, U.S. exports could range from 87-114 million tons in 1985; 94 to 138 million in 1990; 106 to 157 million in 1995; (these forecasts are highly preliminary subject to revision). In the medium case, the U.S. is expected to maintain a 30 percent share of the market.

U.S. EXPORTS OF COAL, 1985, 1990, 1995

(million short tons)

	1980	1985			1990			1995		
		Low	Med.	High	Low	Med.	High	Low	Med.	High
Steam	28	32	40	47	44	56	69	56	80	98
Met	63	50	56	67	50	60	69	50	60	69
Total	90	87	96	114	94	116	138	106	140	167

TOTAL WORLD COAL TRADE - 1985, 1990, 1995

(mid case - million short tons)

	1980	1985	1990	1995
Steam	111	160	234	312
Met	155	155	157	160
Total	266	315	391	472
% U.S.	33.8%	30.5%	30.0%	30%

1/ Wilson, Carroll L. "Coal Bridge to the Future", Report of the World Coal Study, Ballinger Publishing Company, Cambridge, Mass., May, 1980.

2/ U.S. Department of Energy, "Interim Report of the Interagency Coal Export Task Force", Washington, D.C., January, 1981.

3/ A Forecast for U.S. Coal in the 1980's", National Coal Association, Wash., D.C., January, 1981.

4/ "Coal Trade Report", H. Clarkson & Co., London, England, #53, May 10, 1983.

5/ World Coal Magazine, November - December, 1982.

6/ "Coal Trade Outlook to 1990", H. Clarkson & Co., London, England, February, 1983.

7/ "World Energy Outlook", International Energy Agency, Paris, France, October, 1982.

8/ "The Use of Coal in Industry", A report by the Coal Industry Advisory Board, IEA, Paris, France, May, 1982.

9/ de Villiers Leach, J.G., "South Africa - Background Notes", Presented to Coal Trans 81, October, 1981.

Table I.

WORLD COAL TRADE - A DECADE OF CHANGE
(million short tons)

	1970 [1]		1979 [1]		1980 [1]		1981 [1]	
Major Exporters	Tons	% Share	Tons	% Share	Tons	% Share	Tons	% Share
United States	71.7	38.4	66.0	25.9	91.7	32.3	112.4	37.0
Australia	19.8	10.6	44.6	17.5	47.2	16.6	56.2	18.4
Canada	4.4	2.4	15.3	6.0	15.8	5.6	18.0	5.9
United Kingdom	3.5	1.9	2.6	1.0	5.3	1.9	10.4	3.4
South Africa	1.7	0.9	25.7	10.1	31.4	11.1	32.9	10.8
Poland	31.8	17.0	45.6	17.9	34.5	12.2	16.6	5.5
USSR	27.0	14.5	28.4	1.1	28.2	9.9	24.2	8.0
China	0.3	0.2	1.7	0.7	6.8	2.4	7.2	2.4
Other	26.4	14.1	25.0	9.8	22.7	8.0	26.0	8.6
Total	186.6	100.0	254.9	100.0	283.6	100.0	303.9	100.0
Major Importers								
Canada	18.9	10.2	19.4	7.6	17.5	6.4	16.3	5.5
South America	3.4	1.8	6.9	2.7	6.7	2.3	5.3	1.7
EEC[2]	59.5	31.9	86.9	34.1	100.9	36.9	100.4	33.0
Other Europe	16.5	8.8	20.5	8.0	22.0	7.8	27.1	8.9
Communist Block	31.8	17.0	40.2	15.8	33.6	13.0	28.4	9.3
Japan	55.3	29.7	64.5	25.3	75.6	27.0	86.3	28.4
Other	1.2	0.6	6.5	6.5	27.3	6.8	40.1	13.2
Total	186.6	100.0	254.9	100.0	278.2	100.0	303.9	100.0

[1] Source: World Coal Magazine, November/December 1982.
[2] All years adjusted to include 10 EEC Countries.

Table 2.

WORLD-WIDE DEMAND FOR U.S. BITUMINOUS COAL: 1975-1982
(Millions of Net Tons)

	Canada			Overseas			Total		
Year	Met	Steam	Total	Met	Steam	Total	Met	Steam	Total
1975	7.2	9.5	16.7	44.4	4.6	49.0	51.6	14.1	65.7
1976	7.3	9.2	16.5	40.5	2.4	42.9	47.8	11.6	59.4
1977	6.6	10.6	17.2	35.3	1.2	36.5	41.9	11.8	53.7
1978	6.0	9.2	15.2	23.8	0.4	24.2	29.8	9.6	39.4
1979	7.6	11.6	19.2	42.7	2.6	45.3	50.3	14.2	64.5
1980	6.3	11.6	12.9	56.8	15.2	2.0	63.1	26.8	89.9
1981	5.8	12.0	17.9	59.4	33.0	92.4	65.2	45.0	110.2
1982	4.9	13.3	18.2	59.7	27.4	87.0	64.6	40.7	105.2

SOURCE: Bureau of the Census, U.S. Department of Commerce.

Table 3.

FORECAST OF STEAM COAL IMPORTS – TOTAL WORLD-WIDE

(Millions of Net Tons)

Importer	Actual 1980*	Forecast 1985	 1990	 1995
EUROPE				
Austria	0.4	2	3	4
Belgium/Luxembourg	6.2	8	10	13
Denmark	11.0	12	14	16
Finland	3.3	6	8	10
France	22.0	18	21	25
Greece	-	1	2	4
Ireland	1.4	2	4	6
Italy	6.2	13	28	39
Netherlands	3.0	6	8	12
Norway	0.1	1/	1/	1/
Spain/Portugal	0.8	8	12	20
Sweden	0.4	2	6	9
United Kingdom	2.8	1/	1/	1/
West Germany	9.4	12	18	22
Subtotal	67.0	90	135	180
PACIFIC RIM				
Japan	7.7	17	30	43
Korea	3.3	8	12	18
Taiwan	5.5	8	10	15
Hong Kong & Other	2.2	4	7	12
Subtotal	18.7	37	59	88
OTHER				
Canada	10.8	11	11	11
Eastern Europe & Other Miscellaneous	11.0 3.5	14 8	17 12	18 15
Subtotal	25.3	33	40	44
TOTAL	111.0	160	234	312

1/ less than 500,000 tons.

* NCA estimates based on data from the Department of Energy and from the International Energy Agency. All data exclude export-import trade between western European countries.

Preliminary Estimates

Appendix B.

PORT CAPACITY, CHANNEL DEPTH

The tables in this Appendix summarize coal port capacity in importing areas -- Europe, Japan, Korea, Taiwan, and in exporting countries -- the United States, Australia, South Africa, Canada, and Poland. This information should be used with care.

While we have attempted to verify as much of this data as possible, we are certain that there are errors and that the data are incomplete.

The planned capacity additions listed in the following tables are most certainly overstated. As market conditions change, many of these plans will be postponed or cancelled. We do believe, however, that the data are useful to indicate trends -- towards the construction and use of deeper draft ports. Additional data on these ports is available upon request.

Table 1.

Summary: Current Port Discharge Capacity - Importing Areas
(by maximum dwt of ship which can be handled 1/)

Area	Size of Vessel: 0-40 (nominal port capacity)	40-80	80-125	125-175	175+	Total
Denmark	-	2	-	10	-	12
France (NW)	2	4	-	20	-	26
Netherlands	1	17	26	-	7	51
UK 4/	4	-	3	3	3	13
West Germany	-	20	-	-	-	20
Other NW Europe	4	15	-	-	21	40
France (Med)	-	-	-	4	2	6
Italy	13	3	8	-	-	24
Spain	5	5	10	-	-	20
Other Southern Eur.	-	1	-	-	-	1
Other Mediterr. 2/	6	2	-	6	-	1
Canada-GLs 3/	17	-	-	-	-	17
Japan	33	22	27	16	25	123
Asia (excl Japan)	7	29	-	-	-	36
Latin America	4	6	10	-	-	20
WORLD TOTAL	96	126	84	59	58	423

1/ excludes capacity for handling coastal movements; data as of end, 1982.

2/ includes Romania.

3/ includes only capacity for importing from the U.S.A.

4/ taken as a third of total bulk unloading capacity at certain ports which are largely iron-ore handlers.

Source: Long, Ray, "Constraints on International Trade in Coal", IEA Coal Research, Economic Assessment Service, EAS Report No. G3/82, December, 1982.

Capacity is million metric tons per year

Table 2.

Summary: Indicated Discharge Capacity by 1990's Importing Areas (by maximum dwt of ship which can be handled)

Area	Size of Vessel: 0-40	40-80	80-125	125-175	175+	Total
		(nominal port capacity)				
Denmark	-	2	-	15	-	17
France (NW)	2	2	5	12	25	46
Netherlands	3	17	23	7	32	82
UK 4/	4	-	3	4	3	14
West Germany	-	17	4	-	-	21
Other NW Europe	4	9	3	30	21	67
France (Med)	-	-	-	4	20	24
Italy	9	3	42	20	-	74
Spain	5	3	10	3	37	58
Other South Eur.	-	1	9	-	-	10
Other Med. 2/	5	8	-	13	9	35
Canada-GLs 3/	17	-	-	-	-	17
Japan	19	25	33	38	48	163
Asia (excl Japan)	6	21	8	100	7	142
Latin America	4	6	10	-	20	40
WORLD TOTAL	78	114	150	246	222	810
Change from 1982	-18	-12	+66	+187	+164	+387

1/ excludes capacity for handling coastal movements.

2/ including Romania

3/ includes only capacity for importing from the U.S.A.

4/ taken as a third of total bulk unloading capacity at certain ports which are largely iron-ore handlers.

Source: Long, Ray, "Constraints on International Trade in Coal", IEA Coal Research, Economic Assessment Service, EAS Report No. G3/82, December, 1982.

Note: Data should be used to indicate trends only. Due to changing market conditions, not all this planned port capacity will come on line in this period.

Capacity is million metric tons per year

Table 3.

Summary: Current Port Loading Capacity - Exporting Area
(By Maximum dwt of ship which can be handled)

Size of vessel:

(nominal port capacity)

	0-40	40-80	80-125	125-175	175+	Total
United Kingdom	20	-	-	-	-	20
USA-Great Lakes[1]	20	-	-	-	-	20
USA-East Coast	5	43	38	-	-	86
USA-Gulf	2	38	-	-	-	40
USA-West Coast	2	5	-	-	-	7
Canada-East	6	-	-	5	-	11
Canada-West	-	2	2	19	-	23
Australia-NSW	1	27	-	-	-	28
Australia-QLD	1	23	-	20	-	44
Southern Africa[2]	2	-	-	28	-	30
South America	-	-	-	-	-	-
USSR-Black Sea	1	-	-	-	-	1
USSR-East	-	3	6	-	-	9
East Europe	26	10	4	-	-	40
China	19	-	-	-	-	19
Other	1	-	-	-	-	1
WORLD TOTAL	106	151	50	72		379

Capacity is million metric tons per year.

1/ includes only capacity for handling exports to Canada and some ocean movement via Great Lakes, as of end, 1982.

2/ includes Mozambique.

Source: Long, Ray, "Constraints on International Trade in Coal", IEA Coal Research, Economic Assessment Service, EAS Report No. G3/82, December, 1982.

Note: U.S. data does not correspond with data compiled by MARAD and included elsewhere in this Appendix.

Table 4.

Summary: Indicated Port Loading Capacity by 1990's Exporting Area
(By maximum dwt ship which can be handled)

	Size of Vessel: 0-40	40-80	80-125	125-175	175+	Total
		(nominal port capacity)				
United Kingdom	17		-	-	-	17
USA-Great Lakes[1]	22		-	-	-	22
USA-East Coast	13	125	60	42[3]	20[3]	260
USA-Gulf	4	2	16	179[3]	-	201
USA-West Coast	2	41	28	10	21	102
Canada-East	6	-	-	20	-	26
Canada-West	-	2	2	-	39	43
Australia-NSW	1	5	25	-	55	86
Australia-QLD	1	13	20	35	25	94
Southern Afr[2]	-	-	5	-	75	80
South America	-	-	-	15	-	15
USSR-Black Sea	2	-	-	-	-	2
USSR-East	-	3	10	-	-	13
East Europe	26	10	4	-	-	40
China	35	70	10	-	-	115
Other	-	1	-	-	-	1
WORLD TOTAL	129	272	180	301	235	1117
Change from 1982	+23	+121	+130	+229	+235	—

Capacity is million metric tons per year.

[1] includes only capacity for handling exports to Canada and some ocean movements via Great Lakes.

[2] includes Mozambique.

[3] dependent on dredging proceeding.

Source: Long, Ray, "Constraints on International Trade in Coal", IEA Coal Research, Economic Assessment Service, ESA Report No. G3/82, December, 1982.

Note: U.S. data does not correspond with data compiled by MARAD and included elsewhere in this Appendix. Obviously, not all new capacity summarized in this table is expected to come on line. The table is meant to indicate trends only.

Table 5.

EUROPEAN IMPORTING COUNTRIES

EXISTING COAL DISCHARGE FACILITIES

Country	Port	Terminal	MAXIMUM DRAFT (ft)	MAXIMUM SHIP SIZE (dwt)	COAL CAPACITY (metric tons per year)
Europe					
Belgium	Antwerp	STOCATRA Delwaidedock	48	125,000	9.0 (new)
		STOCATRA HANSADOCK	50	100,000	9.0
		SGM TRANSSHIPMENT	45	80,000	20.0
		Vloeberghs Leopold	38	45,000	
	Ghent	CBM Sufferdock 92/95	40	55,000	5.0
		Sidma Terminal	40	55,000	
		Ghent Coal Terminal	43	65,000	1.5 (new)
	Zeebrugge	Coal Import Berth	41	60,000	
Denmark	ENSTEDVAERKET	Elsam Coal Berth	52½	120,000	5.0
	ESBJERG	Coal Berth	35	35,000	
	Hellerup ASNAES	Elsam	43	120,000	3.0 (new)
	STIGSNAESVAERKET	Elkraft	59	170,000	3.0
	STUDSTRUPVAERKET	I/S Midtkraft	37	40,000	
Ireland	Cork	New Ringaskiddy	37	40,000	1.0
Finland	INKOO		32	N/A	4.0
France	Bordeaux	Bassens Multi Bulk	31	30,000	1.0
	Dunkirk	PAD	47	125,000	6.0
		Public Coal/Ore Western	63	200,000	3.5 - first phase
		Usinor #5	44	75,000	N/A
	Le Havre	PAH Ore 1	40	80,000	7.0
		PAH Ore 2	52½	150,000	
	Marseilles - FOS	Solmor FOS Ore Quay	66	200,000	
		PAM Solmer	59	150,000	4.0
	Montoir/Nantes	EdF	52	120,000	4.5
	ROUEN	St. Wandrille Peninsula	35	35,000	N/A

Table 5. (Cont'd.)

EUROPEAN IMPORTING COUNTRIES

EXISTING COAL DISCHARGE FACILITIES (Cont'd.)

Country	Port	Terminal	MAXIMUM DRAFT (ft)	MAXIMUM SHIP SIZE (dwt)	COAL CAPACITY (metric tons per year)
Greece	MILAKI	N/A	46	120,000	4.0
Italy	Bagnoli	Italsider North	40	35,000	
	Genoa	Italsider Pier Berth	40	55,000	
	La Spezia	Enel Coal Quay	36	38,000	
	Piombino	PDP ACCIAIERE	39	50,000	
	Savona	Fornicoke Pier	38	45,000	
	Taranto	Italsider Pier 2/4	75	200,000	6.0
	Trieste	Italsider Berth	45	80,000	
Netherlands	Amsterdam	OBA Westhaven	45	100,000	6.0
	DelfzIJL	PDA Eemshaven	42	65,000	
	IJMUIDEN	Hoogovens	48	100,000	4.0
	Rotterdam	Swarttouw Valcaanhaven	40	40,000	5.0
		Swarttouw St. Laurenshaven	45	80,000	9.0
		Botlek BV Botlek	45	80,000	11.0
		SNV Waalhaven 5	40	60,000	6.0
		EMO Maasvlakte	65	250,000	25.0
	Terneuzen	OVET	40	55,000	5.0
Norway	Mo I Rana	NORSK KOKSVERK A/S	35	35,000	
Portugal	Sines	Berth 3	54	150,000	
		Berth 5	38	45,000	
Spain	Bilbao	JPB Adosado Bulk	44	75,000	2.0
	GIJON-MUSEL	JPG DIQUE North Pier 1	50	100,000	1.0
Sweden	Lulea	Norbottens Uddebo Quay	42	60,000	
	Oxelosund	TGJC AB	38	45,000	

Table 5. (Cont'd.)

EUROPEAN IMPORTING COUNTRIES

EXISTING COAL DISCHARGE FACILITIES (Cont'd.)

Country	Port	Terminal	MAXIMUM DRAFT (ft)	MAXIMUM SHIP SIZE (dwt)	COAL CAPACITY (metric tons per year)
United Kingdom	Hunterston	BSC Ore/Coal Import	102	350,000	7.0
West Germany	Brunsbuttel	Elbenhafen Berth	37	40,000	
	Emden	Emben Hafen Berth	38	45,000	8.0
	Hamburg	Hamburg Dock	40	55,000	
		Wedal Coal Terminal	43	70,000	
		Kattwyk Coal Berth	39	50,000	
		Hansaport Berth	45	100,000	2.0
	Nordenham	Midgard Pier 1	42	65,000	
	Wilhelmshaven	Niedersachesen Bulk	46	110,000	4.0
Yugoslavia	RIJEKA	Bakar Basin Bulk	51	150,000	6.0
South America					
Brazil	Sepetiba	Sepetiba	45	100,000	3.0 first-phase
	Cubatao	Cubatao	39	55,000	

Note: This does not purport to be a complete listing of coal discharge facilities in Europe. We have attempted to verify the accuracy of the data, but cannot guarantee the accuracy.

Source: Cargo Systems Research Consultant's Seaborne Coal Trade, additional information. Most of the base data was included in a paper by W.K. Scholten, deputy managing director, Port of Rotterdam, "EEC Port Capacity and Developing Demand", Coal TRANS 82, October 26-28, 1982.

Table 6:

EXISTING COAL DISCHARGE FACILITIES - Japan

Metallurgical Coal		Maximum	
Steel Company	Terminal Location	Water Depth (feet)	Vessel Size (DWT)
Nippon Steel	Tobata	57.5	180,000
	(2 wharfs)	56	160,000
Nippon Steel	Muroran	46	80,000
	(2 wharfs)	54	160,000
Nippon Steel	Kamaishi	44	37,000
	(2 wharfs)	46	70,000
Nippon Steel	Hirohata	56	160,000
	(1 wharf)		
Nippon Steel	Nagoya	46	100,000
	(1 wharf)		
Nippon Steel	Sakai	47.5	80,000
	(1 wharf)		
Nippon Steel	Kimitsu	56	200,000
	(3 wharfs)	62.5	200,000
		62.5	200,000
Nippon Steel	Ohita Sea Berth	115	300,000
	(2 wharfs)	82	250,000
Nippon Steel	Hibikinada	56	70,000
	(1 wharf)		
Sumitomo Metal	Wakayama	47.5	100,000
	(2 wharfs)	47.5	100,000
Sumitomo Metal	Kajima	70.5	120,000
	(2 wharfs	70.5	180,000
Kobe Steel	Kakoawa	46	100,000
	(4 wharfs)	56	165,000
		56	165,000
		56	165,000
Nippon Kokan	Fukuyama	56	150,000
	(4 wharfs)	52.5	100,000
		57	150,000
		56	160,000

Table 6. (Cont'd.)

EXISTING COAL DISCHARGE FACILITIES - Japan (Cont'd.)

Steel Company	Terminal Location	Maximum Water Depth (feet)	Maximum Vessel Size (DWT)
Nippon Kokan	Keihin (2 wharfs)	72 59	200,000 160,000
Kowasaki Seitetsu	Chiba (2 wharfs)	59 59	160,000 160,000
Kowasaki Seitetsu	Mizushima (2 wharfs)	52.5 56	130,000 160,000

Note: There are no existing plans on the part of Japanese steel producers to construct additional coal unloading terminals.

Steam Coal

	Terminal Location	Maximum Water Depth (feet)	Maximum Vessel Size (DWT)
	Matsushima	46	60,000
	Muroran - Iwaiya Coal Center	43	55,000
	Fukayama - NK Coal Center	56	200,000
	Yumaguchi - Ube Coal Center	49	70,000
	Naoetsu	46	55,000
	Kashima	62	180,000

Note: This does not purport to be a complete listing of coal discharge facilities in Japan. Although we have attempted to verify the data, we cannot guarantee its accuracy.

Source: Virginia Port Authority, VPA Coal Task Force Report, December, 1982; and other sources.

Table 7.

EXISTING COAL DISCHARGE FACILITIES

Korea - Taiwan

Country/Port Location	Unloading Capacity (tons/Hour)	Maximum Water Depth (feet)	Maximum Vessel Size (DWT)
KOREA			
Ulsan - Pier 2	10,000	39	35,000
Bukpeong - Public	N/A	41	30,000
Pohang City	140,000 tons/day	54	100,000
TAIWAN			
Kaohsiung	N/A	35	35,000
Taichung	N/A	43	63,000
Keelung	N/A	35	35,000
Su-Ao	N/A	35	35,000

Note: This does not purport to be a complete listing. Although we have attempted to verify the data, we cannot guarantee accuracy.

Source: Virginia Port Authority, VPA Coal Task Force Report, December, 1982; and other sources.

Table 8.

PLANNED ADDITIONS - COAL DISCHARGE FACILITIES

		Port	MAXIMUM DRAFT (ft)	MAXIMUM SHIP SIZE (dwt)	New Loading Capacity (Mt)	Year Complete
Europe						
EEC	Belgium	Antwerp	48.5	160,000	5.0	1985/86
		Zeebrugge	N/A	125,000	7.0	N/A
	Denmark	Enstedvaerket	56	170,000	4.0	1983
	France	Dunkirk	69	250,000	5.0	1983
		Le Havre	56	150,000	7.0	1985
		Fos	66	250,000	7.0	1985/86
		Montoir	52	140,000	3.0	1983
	Ireland	Money Pt.	62	170,000	4.0	1984
	Netherlands	Rotterdam	72	285,000	15.0	1984
		Ijmuiden	56	180,000	5.0	1985
	West Germany	Wilhelmshaven	66	250,000	10.0	1985+
	Italy	Trieste	56	170,000	7.0	1985/86
Other Europe						
	Finland	Pori	53	150,000	2.0	1985
	Norway	Brevik	49	100,000+	0.5	1985
	Portugal	Sines	60	150,000+	6.0	1986
	Spain	Algeciras	72	285,000	10.0	1985

Table 8. (Cont'd.)

PLANNED ADDITIONS - COAL DISCHARGE FACILITIES (Cont'd.)

	Port	MAXIMUM DRAFT (ft)	MAXIMUM SHIP SIZE (dwt)	New Loading Capacity (Mt)	Year Complete
Pacific Rim					
Hong Kong		55	100,000+	8.0-12.0	1986/90
Japan	Fukuyama	60	150,000+	3.5-9.5	1984/90
	Mitsui	45-50	100,000+	4.5	1985
	Salcito	60	150,000+	7.0	1987
	Tomakomai	50	100,000+	8.5	1990
Taiwan	Kaohsuing	50	100,000+	10.0	1983
		55	100,000+	12.0	1985
Brazil					
	Praia Mole	54	140,000+	7.0	1983
	Septiba	57	150,000+	6.0	1983

1/ million metric tons per year.

Source: Data for EEC - "EEC Port Capacity and Developing Demand", WK Scholten, Port of Rotterdam.

Data for other Europe, Brazil, Pacific Rim provided by Shell International, Ltd., May, 1983.

Table 9.

EXISTING AND PROPOSED COAL LOADING TERMINALS

Exporter - Australia

State	Port	Terminal	EXISTING MAXIMUM SHIP SIZE (dwt)	EXISTING Coal Loading Capacity (Mt) 2/	PROPOSED 1/ MAXIMUM SHIP SIZE (dwt)	PROPOSED 1/ New Loading Capacity (Mt) 2/
New South Wales	Newcastle	Carrington Basin	55,000	5.1	60,000	2.1
		PWCS Loader	70,000	10.8	110,000	-
		KOORAGANG Is.	-	-	110,000	22.5
	Sidney	Balmain	30,000	4.0	45,000	-
		CAIL Balls Head	30,000	0.9	35,000	-
	Port Kembla	Old Facility	75,000	6.7	-	-
		New Facility	-	-	110,000	12.6
Queensland	Hay Port	Utah/DHM Berth 1	150,000	9.0	-	-
		Utah/DHM Berth 2	150,000	9.0	-	-
		New Loader Berth 3	-	-	200,000	13.5
	Gladstone	Auckland Pt.	55,000	4.5	-	-
		Barney Pt.	60,000	7.2	-	-
		Clinton Facility	60,000	9.0	120,000	1.8
	Birven	Abbott Pt.	-	-	160,000	13.5
	Brisbane	Fisherman's Is.	-	-	60,000	2.7
TOTAL				66.2		68.7

1/ To be on line by 1990.

2/ Million metric (tons/year)

Source: Primary Source; Coal Transport Infrastructure, A study done on behalf of the Coal Industry Advisory Board, IEA, April 1982, and confirmed if possible with later data.

Table 10.

COAL LOADING TERMINALS

Exporter - Canada

State	Port	Terminal	EXISTING MAXIMUM SHIP SIZE (dwt)	EXISTING Coal Loading Capacity 2/ (Mt)	PROPOSED 1/ MAXIMUM SHIP SIZE (dwt)	PROPOSED 1/ New Loading Capacity 2/ (Mt)
British Columbia	Vancouver	Roberts BANK	165,000	18.0	250,000	1.8
		Neptune Bulk	120,000	5.9	-	-
		Pacific Bulk	65,000	2.0	-	-
	Prince Rupert	Ridley Island	-	-	250,000	6.3
Ontario	Thunder Bay	Thunder Bay	30,000	3.0	-	-
Quebec	Contrecoeur	-	60,000	2.0	-	-
	Quebec City	Beauport Flats	100,000	2.0	-	-
	Montreal	-	50,000	1.0	-	-
	Syst Isks	Midstream	200,000	2.0	-	-
Nova Scotia	Sydney	Devco Coal Berth	35,000	1.4	-	-
		TOTAL		37.3		8.1

1/ To be on line by 1990.

2/ Million metric tons per year.

Source: Primary Source: Coal Transport Infrastructure, A study done on behalf of the Coal Industry Advisory Board, IEA, April, 1982 and confirmed if possible with later data.

Table 11.

EXISTING COAL LOADING TERMINALS

Exporter - Poland

Port	Facility	MAXIMUM DEPTH ft.	INFERRED MAX. SHIP SIZE (dwt)
Gdansk	Baz Basin	32	27,000
	North Coal Terminal	66	130,000
Gdynia	Silesian Quay	28	20-25,000
	Swedish Quay	29	20-25,000
	Dutch Quay	32	27,000
Szczecin	Mining Basin	28	20-25,000
Swinoujscie	Coal Quay	42	60,000

Source: "Poland - Coal Production and Export Capabilities", A. Sygalt, Polfracht Shipbroker & Charter Company, Gdynia Poland. Paper presented to Coal TRANS 81, October, 1981.

Data cannot be confirmed.

Table 12.

EXISTING AND PROPOSED COAL LOADING TERMINALS

Exporter - South Africa

Port	Terminal	EXISTING MAXIMUM SHIP SIZE (dwt)	EXISTING Coal Loading Capacity (Mt) [2]	PROPOSED [1] MAXIMUM SHIP SIZE (dwt)	PROPOSED [1] New Loading Capacity (Mt) [2]
Durban	Bluff Coaling Berth 4	38,000	2.0[3]	-	-
Richards Bay	Stage 1 and 2	170,000	23.4[3]	-	-
	Stage 3 and 4	-	-	170,000	16.2[4]
	Expansion[4]	-	-	170,000	30.0[4]
	TOTAL		25.4		46.2

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[1] To be on line by 1990.

[2] Million metric tons per year.

[3] Source: Coal Transport Infrastructure, A study done for the Coal Industry Advisory Board, April, 1982.

[4] Source: Supplied by Shell Coal International, Ltd., April 1983.

Table 13.

EXISTING AND PROPOSED COAL LOADING CAPACITY

Exporter - The United States

STATE	Port	Terminal	EXISTING MAXIMUM DRAFT (ft)	EXISTING MAXIMUM SHIP SIZE (dwt)	EXISTING COAL LDG. CAP. (Mst)2/	PROPOSED1/ MAXIMUM DRAFT (ft)	PROPOSED1/ MAXIMUM SHIP SIZE (dwt)	PROPOSED1/ New Loading Capacity (Mst) 2/
EAST COAST								
New York	Ravena	Atlantic Cement	32	27,000	1.0	-	-	-
	NY/NJ Port Authority	Site Port Newark	35	36,000	3.0	-	-	-
Pennsylvania	Philadelphia	Pier 124	40	40,000	5.0	40	40,000	5.0
		Energy Terminal	40	60,000	5.0	-	-	-
New Jersey	Camden	Beckett Street	40	60,000	0.5	-	-	-
Maryland	Baltimore	Curtis Bay, Chessie	42	50,000	16.6	50	100,000+	-
		Curtis Bay Company	42	60,000	10.0	50	100,000+	-
		Consol Marine	-	-	-	50	100,000+	10.0
Virginia	Norfolk	Pier 6 - N&W	45	80,000	36.0	55	100,000+	-
		Pier 5 - N&W	45	40,000	4.0	55	40,000	-
	Newport News	Pier 14 - Chessie	45	80,000	16.5	55	120,000	-
		Pier 15 - Chessie	38	40,000	5.3	55	40,000	-
		Pier 9 - Massey	45	80,000	12.0	55	100,000+	-
		Dominion Terminal	-	-	-	55	100,000+	15.0
North Carolina	Moorehead City	NCSPA - Bulk	40	70,000	3.0	-	-	-
South Carolina	Charleston	Massey Coal Terminal	35	40,000	2.5	-	-	-
Georgia	Savannah	Southern Bulk Ind.	38	50,000	3.0	42	70,000	-

Table 13.

EXISTING AND PROPOSED COAL LOADING CAPACITY (Cont'd.)

Exporter - The United States

STATE	Port	Terminal	EXISTING MAXIMUM DRAFT (ft)	EXISTING MAXIMUM SHIP SIZE (dwt)	EXISTING Coal Loading Cap. (Mst) 2/	PROPOSED 1/ MAXIMUM DRAFT (ft)	PROPOSED 1/ MAXIMUM SHIP SIZE (dwt)	PROPOSED 1/ New Loading Capacity (Mst) 2/
GULF COAST								
Alabama	Mobile	McDuffie Island	40	60,000+	10.0	55	100,000+	13.0
		Bulk Plant	40	60,000	2.0	-	-	-
Louisiana	New Orleans	Public Bulk (MR60)	36	50,000	4.0	-	-	-
		Electro Coal	40	60,000	12.0	55	100,000+	13.0
		International	40	60,000	15.0	55	100,000+	-
	Baton Rouge	Burnside Terminal	40	60,000	2.0	55	100,000+	-
	Midstream Operations on the lower Mississippi		40	60,000	60.0	55	100,000+	-
Texas	Corpus Christi	Farrell-Coyser	40	75,000	1.0	45	100,000+	-
	Port Arthur	TOPCO	42	60,000	4.0	-	-	-
WEST COAST								
California	Los Angeles	Berth 49-50	51	100,000	3.0	-	-	-
	Long Beach	Pier G 212-215	45	70,000	5.0	-	-	-
	Stockton	Bulk Terminal	30	32,000	1.0	35	40,000	1.0

Table 13.

EXISTING AND PROPOSED COAL LOADING CAPACITY (Cont'd.)

Exporter - The United States

STATE	Port	Terminal	EXISTING			PROPOSED		
			MAXIMUM DRAFT (ft)	MAXIMUM SHIP SIZE (dwt)	Coal Loading Cap. (Mst)3/	MAXIMUM DRAFT (ft)	MAXIMUM SHIP SIZE (dwt)	New Loading Capacity (Mst)2/
GREAT LAKES								
Ohio, Pa.	Ashtabula (Ohio)	Lower Lake Dock	-	3/	8.0	-	-	-
	Conneaut (Ohio)	Pittsburg & Cenneaut	-	3/	13.5	-	-	-
	Erie (Pa.)	Codan Marine	-	3/	0.4	-	-	-
	Sandusky (Ohio)	Lower Lake Dock	-	3/	7.5	-	-	-
	Toledo	Chessie	-	3/	24.0	-	-	-
Minnesota/ Wisc.	Superior	Superior Midwest	-	3/	18.0			

1/ Capacity Category "Under Construction" only included.

2/ Million short tons per year.

3/ Restricted by lock sizes.

Source: "Existing and Potential U.S. Coal Export Loading Terminals", Maritime Administration, U.S. Department of Transportation, May, 1983.

Appendix C.

OCEAN TRANSPORTATION AND SHIPPING COSTS

Approximately 80 percent of the coal traded on world market is transported by sea. As costs of ocean transportation can represent a major portion - 15 to 30 percent - of the delivered cost of coals it is important to find the most efficient and least expensive vessel-transport combination available. Often the cost of ocean transportation will determine whether a particular source of coal is competitive with other coals in the market.

Coal is generally sold f.o.b. the port - the customer is charged with the responsibility of arranging ocean transport. Generally speaking the shorter the distance and the larger the vessel the lower the costs. The customer usually attempts to minimize the first factor and maximize the second although many other factors such as availability of backnaul cargoes, costs of transshipment, storage, influence the size of vessel used and the final delivered price the customer pays.

As the international market for coal grows and an increasing percentage of seaborne coal is shipped under time charter arrangements with long terms contracts of affreightment[1], the trend toward use of larger vessel sizes will continue to be evident. As table I shows, in 1971 60 percent of all seaborne coal traded was shipped in vesels of 40,000 dwt or less, 2 percent was shipped in vessels larger than 80,000 dwt. A decade later in 1981, only 32 percent was shipped in the smaller size vessels and a full 35 percent in vessels over 80,000 dwt (28 percent in vessels greater than 100,000 dwt).

There are several reasons for the trend toward larger vessels. Coal contracts are becoming more "concentrated" allowing purchasers to take advantage of transportation economies of scale. Instead of many small purchases from many sources, customers tend to sign larger purchase arrangements with a single or fewer sources. This is especially true in the steam market where single utility customers could require several million tons per year.

Larger vessels are available and are more cost effective in many cases. As Table 6 shows, the existing fleet and new builds are tending towards the larger size (over 80,000 dwt), indicating continued availability. Cost effectiveness is illustrated in a recent report done for the Coal Industry Advisory Board which suggests that daily costs (capital and operating, excluding fuel) of a 60,000 dwt vessel approximate 29¢ per ton. The comparable figures for a 120,000 dwt vessel is 18.9¢; for a 170,000 dwt vessel, 16.0¢; for a 250,000 dwt vessel, 13.1¢ per ton (see table 3).

It is probable however, that there will be a practical "upper limit" on vessel sizes of approximately 120,000 - 150,000 dwt (although larger vessels will certainly be used in selected routes) because:

- The marginal "savings per ton shipped" is greatest, 8.1¢, between the 60,000 dwt and 120,000 dwt size. Marginal savings to use a 170,000 dwt are only 2.9¢ per ton.
- Vessels over the 120-150,000 dwt range are unlikely to capture secure backhaul cargoes which increaes total costs to the customer and cannot effectively operate in the spot market.

- Ship sizes are limited by the capacity of both loading and discharge ports. Very few ports can handle vessels over 150,000 dwt without lightering arrangements. Dredging costs to take channels beyond 55 feet are prohibitive for the few vessels that would operate in this trade.

But despite the "upper limit" in size, and although there will continue to be heavy use of Panamex size vessels on many routes, the trend towards use of vessels over 100,000 dwt will continue.

Rates vs. Cost

A word of caution - the actual rates paid by the shipper may have little relation to the costs incurred by the vessel owner. The charter market for bulk carriers is determined by supply and demand and the rate paid can differ greatly according to the time the charter (spot or long term) is arranged.

Nontheless, rates for larger vessels do tend to be lower, on a per ton basis, than for a Panamex or smaller vessel - although the differentials may not always be the same. Table 5 shows selected voyage rates (as opposed to costs). An example illustrates both the volatility of the market and the different cost savings that can be realized by using larger vessels.

TO CONTINENTAL EUROPE

	FROM: St Lawrence Seaway 120-150,000 dwt $/MT	Hampton Roads PANAMAX $/MT	Difference
Current depressed mkt.	$4.75	$5.75	$1.00
Early 1981-tight bulk market	13.25	$17.50	4.25
Forecast - 1984	5.25	6.50	1.25

Source: From Table 5, Appendix C.

Unconventional Loading Techniques

Unconventional loading techniques and new ship technologies may prove economical and would enable use of larger vessels in some areas without deep draft ports. A listing of these would include:

- Part loading a large vessel at port and then "topping-off" offshore in deeper water either by using a self-unloading ocean-going barge (or a smaller ship) or a floating coal terminal. The topping off operation has been used successfully in the Gulf and has been proposed off the east coast of the U.S.

- Construction and use of ultra wide bodied vessels - wide beamed vessels which are designed to carry larger loads while drawing less draft.

Other possibilities include use of slurry, or use of barge carrying vessels - especially applicable on routes where coal is both loaded and discharged at ports on inland river systems.

A discussion of these alternatives to deep draft vessels was prepared for the Department of Energy by Argonne National Laboratory and is included as Table 7 of this Appendix.

Footnote

1/ Coal is shipped under one of three arrangements:

- a contract of affreightment, in which the shipper arranges to ship a specified quantity of coal at a fixed, all inclusive price.
- a time charter in which the shipper pays for or charters the vessel for a fixed period of time at a fixed daily cost exclusive of fuel port charges, etc., which are extra.
- a single voyage spot charter rate whereby the shipper charters the vessel at the going rate for one voyage only.

Currently, 85% of all coal shipped is under a contract of affreightment or on a time charter arrangement.

Longer term freighting offers advantages of cost stabilization especially when the shipper anticipates a tight freight market. When the vessel market is weak however, spot charters can be more advantageous.

Table 1.

COAL SHIPMENTS, BY SIZE OF VESSEL

DWT RANGE	1971	1975	1979	1980	1981
	(% of shipments by ship size)				
40,000 dwt	60	41	35	30	32
40-60,000	30	24	15	14	10
60-80,000	8	22	20	23	23
80-100,000	1	3	4	5	5
100,000+	1	10	26	28	30
TOTAL	100	100	100	100	100

Source: Fearnleys, Oslo, Norway, as reprinted by H. Clarkson & Company, Ltd., London, England. December 21, 1982.

Table 2.

COAL SHIPMENTS, BY SIZE OF VESSEL
REGIONAL ANALYSIS - 1980[1]

	Size of Vessel (000 dwt):					
	40 (% of seaborne trade)	40-60	60-80	80-100	> 100	TOTAL
Exporting Area						
East Europe	72	13	9	1	5	100
Other Europe	70	5	20	4	1	100
North America	18	16	29	7	30[2]	100
Australia	17	19	34	2	28	100
South Africa	20	8	11	8	53	100
Others	100	-	-	-	-	100
Importing Area						
UK/Continent	25	7	21	7	40	100
Mediterranean	14	28	23	13	22	100
Other Europe	54	12	15	4	15	100
South America	27	44	27	-	2	100
Japan	23	13	30	2	32	100
Others	55	17	18	0	10	100

[1] 1980 latest data available, by Region.

[2] Includes Canada. Any vesel of this size leaving U.S. port would not be fully loaded.

Source: Fearnleys, Oslo, Norway as reprinted in Paper "EEC's Port Capacity and Developing Demand", WK Scholten, Port of Rotterdam, given to Coal Trans 82, October, 1982.

Table 3.

COMPARISON OF VESSEL COSTS BY SIZE OF SHIP [1]

(1982 dollars)

Vessel Size (dwt)	Annual Capital Change ($MM)	Operating Costs[2] ($MM)	Annual Total ($MM)	T/C $/Day	Daily Cost [4] Per Ton
60,000	$ 4.12	$2.00	$ 6.12	$ 17,239	$0.287
120,000	5.82	2.24	8.06	22,704	0.189
170,000	7.19	2.44	9.63	27,127	0.160
250,000	8.91	2.76	11.67	32,873	0.131

[1] Conventional vessels, foreign build, foreign flag.

[2] Includes crew, subsistence, stores and supplies, maintenance and repair, insurance.

[3] Does not include fuel costs or other voyage costs which are additional; based on 355 days.

[4] Capital and operating charges only.

Source: Ocean Transport of Coal, A Report of the Coal Industry Advisory Board Infrastructure Committee, IEA, May, 1983.

Table 4.

VOYAGE COSTS ON SELECTED ROUTES BY VESSEL SIZE 1/

TO:	SHIP SIZE (dwt)	FROM: U.S. East Coast $/MT	U.S. Gulf Coast $/MT	U.S. West Coast $/MT	Australia $/MT	Canada $/MT	South Africa $/MT	Columbia $/MT
North Europe								
	60,000	$11.50	$15.20	$26.90	$25.30	$27.80	$ 21.00	$ 14.40
	120,000	8.50	11.00	19.10	18.00	19.70	15.00	10.50
	170,000	7.50	9.70	16.70	15.70	17.20	13.10	9.20
	250,000	6.90	8.70	14.80	14.00	15.30	11.70	8.30
Mediterranean								
	60,000	13.60	16.80	26.60	25.30	27.50	20.50	15.50
	120,000	10.00	12.40	18.90	18.00	19.50	14.60	11.20
	170,000	8.70	10.60	16.50	15.70	17.00	12.80	9.80
	250,000	7.90	9.60	14.60	14.00	15.10	11.40	8.90
Japan								
	60,000	28.20	30.60	14.90	13.40	13.60	22.90	28.50
	120,000	20.00	21.60	10.90	9.80	10.00	16.30	20.20
	170,000	17.50	18.90	9.50	8.60	8.70	14.20	17.70
	250,000	15.50	16.70	8.60	7.80	7.90	12.60	15.60

1/ Note that these are costs, which do not have a close relationship to actual charter rates. This is the rate which would have to be obtained if the vessel owner breaks even.

Fuel costs assumed to be $180/MT.

These are round trip costs - one way in ballast. Includes port charges, canal charges where applicable.

SOURCE: Ocean Transport of Coal, A report of the Coal Industry Advisory Board Infrastructure Committee, IEA, May, 1983.

Table 5.

VOYAGE RATES ON SELECTED ROUTES

($/MTON)

	Movements to Continental Europe			Movements to Japanese Markets		
	Vessel Size(s)	Cargo Size(MT)	Rate/MT	Vessel Size(s)	Cargo Size(MT)	Rate/MT*
CASE I - MOST LIKELY MOVEMENTS IN PRESENT VESSEL AND COAL MARKETS WITH UNDREDGED U.S. PORTS						
St. Lawrence	120-150,000	120-150,000	4.75	120-150,000	120-150,000	9.50
Hampton Roads	Cape/Pan.	70-90/50-70	4.75/5.75	Cape/Pan	70-90/50-70	10.00-11.50/ 14.75*
Baltimore	Panamax	50-70,000	5.75	Panamax	50-70,000	14.75
U.S. Gulf	Panamax	50-70,000	7.00	Panamax	50-70,000	14.00
Roberts Bank	100-150,000	80-120,000	6.25	100-150,000	80-120,000	5.50
Richards Bay	100-150,000	80-150,000	6.00	100-150,000	80-150,000	7.50
Newcastle	100-150,000	80-150,000	7.50	100-150,000	80-150,000	4.50
CASE II - MOVEMENTS PRIOR TO THE CURRENT RECESSION, OR EARLY 1981 WITH RECEIVER VESSEL LIMITATIONS						
St. Lawrence	120-150,000	120-150,000	13.25	----	----	----
Hampton Roads	Panamax	50-70,000	17.50	Cape/Pan	70-100/50-70	14.62/25.00
Baltimore	Panamax	50-60,000	17.50	Panamax	50-60,000	25.00
U.S. Gulf	Panamax.	50-60,000	18.50	Panamax	50-60,000	24.00
Roberts Bank	----	----	----	Cape/Pan	70-100/50-70	11.50/14.50
Richards Bay	Panamax	50-70,000	17.50	Panamax	50-70,000	14.00
Newcastle	Panamax	50-70,000	26.50	150/Cape/Pan	120+/70+/50+	6.50/7.50/ 11.00
CASE III - MOST LIKELY MOVEMENTS IN THE NEXT YEAR WITH UNDREDGE U.S. PORTS (Average 10% Rate Increase*						
St. Lawrence	120-150,000	120-150,000	5.25	120-150,000	120-150,000	10.50
Hampton Roads	Cape/Pan	70-100/50-70	5.25/6.50	Cape/Pan	70-90/50-70	11.00-12.50/ 16.25*
Baltimore	Cape/Pan	70-100/50-70	5.25/6.50	Cape/Pan	70-90/50-70	11.00-12.50/ 16.25*
U.S. Gulf	Cape/Pan	55+/50-60	6.25/8.25	Cape/Pan	55+/50-60	10.50 12.00/ 15.50*
Roberts Bank	150/Cape	120+/50-70	7.00/8.50	150/Cape/Pan	120+/70+/50+	4.50/6.00/ 7.75
Richards Bay	150/Pan	120+/50-70	6.75/8.00	Cape/Pan	70-120/50-70	8.25/10.50
Newcastle	150/Pan	120+/50-70	8.25/10.50	150/Cape/Pan	120+/70+/50+	5.00/6.00/ 8.00

Table 5.

VOYAGE RATES ON SELECTED ROUTES (Cont'd.)

($/MTON)

CASE IV - ASSUMING DREDGING TO 50 FEET AT EAST & GULT COASTS, NO USER FEE, & RETURN TO A NORMAL MARKET IN FOUR YEARS (1987)

	Movements to Continental Europe			Movements to Japanese Markets		
	Vessel Size(s)	Cargo Size(MT)	Rate/MT	Vessel Size(s)	Cargo Size(MT)	Rate/MT
St. Lawrence	120-150,000	120-150,000	7.00	120-150,000	120-150,000	13.75
Hampton Roads	150/Cape/Pan	120-70+50+	6.50/7.50/ 8.75	150/Cape/Pan	120/70+/50+	14.25/16.25/ 21.75
Baltimore	150/Cape/Pan	120/70+/50+	6.50/7.50/ 8.75	150/Cape/Pan	120/70+/50+	14.25/16.25/ 21.75
U.S. Gulf	150/Cape/Pan	120/70+/50+	7.25/8.25/ 11.00	150/Cape/Pan	120/70+/50+	14.00/16.00 20.75
Roberts Bank	150/Cape	150/70+/50+	9.50/11.25	150/Cape/Pan	150/70+/50+	5.75/7.75/ 10.25
Richards Bay	150/Cape/Pan	150/70+/50+	9.00/10.75 10.50	150/Cape/Pan	150/70+/50+	10.00/10.75/ 14.00
Newcastle	150/Pan	150/50+	11.00/15.25	150/Cape/Pan	150/70+/50+	6.25/7.75/ 10.75

CASE V - ASSUMING DREDGING TO 55 FEET AT EAST & GULF COASTS, NO USER FEE, & RETURN TO A NORMAL MARKET IN FOUR YEARS (1987)

	Movements to Continental Europe			Movements to Japanese Markets		
	Vessel Size(s)	Cargo Size(MT)	Rate/MT	Vessel Size(s)	Cargo Size(MT)	Rate/MT
St. Lawrence	120-150,000	120-150,000	6.65	120-150,000	120-150,000	13.40
Hampton Roads	150/Cape/Pan	135/70+50+	6.15/7.15/ 8.40	150/Cape/Pan	135/70+/50+	13.90/15.90/ 21.40
Baltimore	150/Cape/Pan	135/70+/50+	6.15/7.15/ 8.40	150/Cape/Pan	135//70+/50+	13.90/15.50/ 21.40
U.S. Gulf	150/Cape/Pan	135/70+/50+	6.90/7.90/ 10.65	150/Cape/Pan	135/Cape/Pan	13.50/15.50/ 20.40
Roberts Bank	150/Cape	150/70+	9.15/10.90	150/Cape/Pan	150/70+/50+	5.40/7.40/9.9
Richards Bay	150/Cape/Pan	150/70+/50+	8.65/10.40/ 10.15	150/Cape/Pan	150/70+/50+	9.65/10.40/ 13.65
Newcastle	150/Pan	150/50+	10.65/14.90	150/Cape/Pan	150/70+/50+	5.90/7.40/ 10.40

* Lower figures in rates to Japan represent top-off at Richards Bay.

** Rates proposed in vessel market during May, 1983 are now reflecting a 6% increase from Case I figures.

SOURCE: Simpson, Spence, Young-Consolidation Coal Company.

~~Table 6.~~

BULK CARRIER FLEET 1/

Ship Size (Mdwt)	Current Fleet No.	Current Fleet (Mdwt)	On Order 2/ No.	On Order 2/ (Mdwt)	Fleet End of 1985 3/ No.	Fleet End of 1985 3/ (Mdwt)
10-20	1,044	16,633	15	252	1,059	16,885
20-30	1,467	37,592	111	2,826	1,578	40,418
30-40	833	29,179	166	5,906	999	35,085
40-50	295	12,949	89	3,740	384	16,689
50-80	644	39,603	159	10,022	803	49,625
80-100	57	4,927	2	169	59	5,096
100-150	170	20,750	18	2,505	188	23,255
150-200	23	3,843	9	1,526	32	5,369
200+	6	1,352	2	421	8	1,773
TOTAL	4,539	166,828	571	27,367	5,110	194,195
% 80,000	5.6%	18.5%	5.4%	16.9%	5.6%	18.3%
% 40,000	19.8%	42.2%	33.3%	53.5%	21.3%	43.8%

MDWT = Million dead weight tons.

1/ Dry Bulk Carriers only. Does not include combined carriers of which there are 394, (245 over 100,000 dwt) with Mdwt of 47,414 (36,658 Mdwt or 77.3% over 100,000 dwt size).

2/ For delivery by end of 1985.

3/ Fleet size if no lay ups or scraps, an unrealistic assumption.

Source: SSE, Shipping Statistics and Economics, No. 150.
Drewry Shipping Consultants, April, 1983.

Table 7.

Port Dredging Vs. Alternatives for Coal Export Port Development

Alternative	1981 Capital Cost (10^6 $)	Sources of Funding	Capital Recovery Mechanisms	Time Requirements		Constraints	Remarks (key system characteristics, advantages, disadvantages, etc.)
				Tasks	Years		
Port Dredging (Major Ports - to allow 100,000+ dwt ship traffic and loading).	280-440 per port (1980 costs).	Local, state and/or federal govts.; ports.	User fees (based upon vessel draft or cargo tonnage).	Administrative review (EIS, etc.) Congressional authorization and funding. Planning, design and construction.	9-10 6-7 8	Federal government funding doubtful; environmental controversies (dredge disposal site impacts and groundwater aquifer disturbances, etc.).A,B	User charge estimates range from $0.20/ton to $3.70/ton vs. estimated freight rate savings of $3 to $6/ton for deep-draft coal ships.A These savings do not include $6 to $10/ton recent demurrage charges at Norfolk and Baltimore.C Similar economies would result for large oil, ore, and grain ships. U.S. freight rates would improve relative to competition (see Table 1). Tables 2 and 3 indicate that of 15 major coal-port public dredging proposals, only Baltimore and Long Beach have completed administrative review stage (see time requirements columns).
Coarse Coal Pipelines: Kamyr, Inc. (slurry load/dry unload of up to 250,000 dwt ships).	140-160 (5-mi offshore pipelines, 10 million annual tons)a,D,G	Private pipeline company, energy company, or consortium.	Pipeline freight rates (current U.S. port loading costs plus premium added to capture ocean freight savings).	All (EIS requirements not yet investigated).	3	5 mi maximum offshore distance (limits U.S. East Coast applicability); private financing uncertain; environmental considerations not yet investigated; pipeline plugging or severing would require major repairs.D,E	Throughput of 7000 tons coal/h using seven 1000 ton/h onshore high-pressure feeding stations. Large coal particle size (up to 6 in.) and dewatering system claimed to eliminate need for ship retrofits. Return pipeline from ship to shore allows water reuse in system. Coal is 25% of slurry volume and a final coal moisture content of 8-10% aboard ship is estimated.D System has shorter implementation time than dredging, but is unproven underwater, has distance limitations, and has no present commitments. Has reduced coal (only) ocean-freight rates similar to port dredging, but higher loading charge.
Wheelabrator-Frye, Inc. (slurry load/dry unload of 140,000 dwt ships).a	150 (15-mi offshore pipelines, 5 million annual tons) 165 (expanded system - 15 million annual tons).F	Private pipeline company, energy company, or consortium.	Pipeline freight rates (current U.S. port loading cost plus premium added to capture ocean freight savings).	All (assumes EIS not necessary).	3	Private financing and avoidance of EIS uncertain (despite verbal assurances from environmental officials).	Throughput of 2500 tons coal/h. Initial system throughput would require 3 retrofitted ships and expanded system would require 8 additional ships. Costs shown include inland transport interface, coal storage, two pipelines (one for water return and reuse in system), ship mooring buoy, and ships.G Coal is to make up 50% of slurry volume; particles are to be maximum of 2 in.; and final moisture content of coal aboard ship is estimated at 6 to 8%.F System has shorter implementation time than dredging and longer (claimed) distance capabilities than other underwater coal pipelines, but is unproven underwater

Table 7 (Cont'd)

Alternative	1981 Capital Cost (10⁶ $)	Sources of Funding	Capital Recovery Mechanisms	Time Requirements		Constraints	Remarks (key system characteristics, advantages, disadvantages, etc.)
				Tasks	Years		
							and has no present commitments. Distance capabilities are disputed by Boeing Corp., which claims that pump pressures required for moving 2 in. coal underwater beyond 6 mi would burst casings on a centrifugal pump. Has reduced coal (only) ocean-freight rates similar to port dredging, but higher loading charge.
Coal Slurry Pipelines: Boeing Corp. (slurry pipeline from mine mouth to 350,000 dwt slurry carrier ship).[b]	750[c,H] (1980 cost; 11 million tons annually).	Private pipeline, energy company, or consortium.	Pipeline freight rates (current U.S. inland transport and port loading costs, plus premium added to capture ocean-freight savings).	Administrative and environmental approval.[d] Design and construction.	2[H] 4[H]	Only use of predesignated utility corridor or railroad use of its own right-of-way avoids need for state and/or federal eminent domain; water requirements can spark environmental opposition. Funding doubtful for the one proposed.	Underwater pipeline throughput of 6000 long tons coal/h. Ship-to-shore pipeline returns water for treatment and agricultural use. System realizes cost savings of both onshore and offshore slurry pipelines. System can transport only 1/8 in. maximum size particles (53% of slurry weight) or inland pipeline can connect with coarse-coal pipeline at dock area. System has shorter implementation time than dredging, but longer one than coarse-coal pipeline (Exception: built by railroad along its own right-of-way, mine mouth-to-ship slurry pipeline implementation time requirements would roughly equal those for underwater pipelines.) Fine slurry proven underwater. Requires reslurrying of 30%-moisture coal at destination. Has no present commitments.[I] Has reduced coal (only) ocean freight rates similar to port dredging, but higher loading charge.
Continental Resources Corp. (slurry pipeline from port area to 150,000 to 350,000 dwt ships).	250[e] (<20 mi underwater pipelines, 10 million tons annually).[J]	Continental Resources Co.	Pipeline freight rates (current U.S. port loading cost, plus premium added to capture ocean freight savings).	All (assumes EIS not required).	3[e,J]	20 mi maximum offshore distance. Avoidance of EIS uncertain. Water requirements could spark environmental opposition.	System is same as Boeing's except it would be designed as the only port area ship-loading facility or would connect with proposed 1500-mi Kentucky-Florida slurry pipeline. Also differs in that range of chartered vessel sizes is considered. Capital funding can be assured.[J] Has reduced coal (only) ocean freight rates similar to port dredging, but higher loading charge.
Vessel-to-Ship Loading: Topping off of 130,000 dwt	<20/ship[e] (conversion of self-	Shipowners	Topping off charge (<ocean freight	Brokering	0.5-0.8[e] (beginning in 1983-84).	Reduced coal ship freight rates due to European recession; funding	Reduced coal-ship freight rates and reluctance of ship operators and European buyers to make advance commitments due to recession has under-

Table 7 (Cont'd)

Alternative	1981 Capital Cost (10^6 $)	Sources of Funding	Capital Recovery Mechanisms	Time Requirements Tasks	Time Requirements Years	Constraints	Remarks (key system characteristics, advantages, disadvantages, etc.)
ships (using 70,000 dwt ships).	unloading bulk carrier).^{K}		cost difference between full and partial loading).			presently unavailable for those proposed.	mined near-term development. U.S. East Coast efforts postponed until 1983-84. However, 25,000 dwt Great Lakes ships recently loaded 160,000 dwt bulk ship with coal in Seven Islands, Canada (Gulf of St. Lawrence.)^{J,L} Has ocean freight rates only slightly lower than at present.
Topping off 150,000 dwt ships using floating coal terminals (Sea Containers, Inc. and Coastal Barge Corp.).^{T}	80 (40 per terminal, 10 million tons annually).	Sea Containers, Inc. and Coastal Barge Corp.^{T}	Topping off charge (same as above).	Design and construction.	2^{N}	Insufficient shelter in rough weather.	Vessels loaded at port to 70,000 dwt will be topped off. Floating terminal is to operate in 70-ft-deep water beyond bar at mouth of the Mississippi River. Break-even volume is much less than 10 million annual tons. More units may be built.^{T} Has ocean freight rates similar to ship-to-ship topping off.
Barge Loading or topping off of 120,000 dwt ton ships.	None	-	-	Can be immediately implemented.^{A}		Barge and ship scheduling difficulties. Requires deep-draft sheltered loading areas.^{A}	Avoids double transfer of coal at dock, as well as need for dredging. Requires marshalling up to 80 1500-ton barges to meet 120,000 dwt ship and a sheltered area with 55-ft depth.^{A} Largest ship loaded so far 59,000 cargo dwt; took 5 days with 2 derrick cranes. Loading 120,000 dwt would take 5 days using 4 derrick cranes.^{M} Has ocean freight rates slightly lower than current rates.
Barge-Carrying-Ships: Current (LASH, SEABEE ships).	120/ship^{N} (SEABEE).	None needed (existing) or private shipping company.	Ocean freight rates.	Design and construction.	2.5^{N}	Insufficient cargo capacity, non-competitive freight rates.	LASH ship cargo capacity 25,000 tons using loaded barges; 40,000 tons loading ship cells directly. Minimum freight rate of $125/ton not competitive.^{O} SEABEE cargo capacity 23,000 tons; best long-term contract rate of $90/ton.^{P} Neither ship type designed for this service. High tare-to-cargo weight ratio.
Proposed (120,000 dwt ship - 1257-ft length, 213-ft beam, 38.7-ft draft; 80 barges with 1500 tons capacity each).	250^{e,N} (1.2 million tons/ship annually @10 trips).	Private shipping company.	Ocean freight rates.	Design and construction.	3.5 (U.S.)^{N} 2 (foreign)^{N}	Wide-beam incompatibility with most U.S. port channels, dry docks.^{P,Q} Government construction subsidies unlikely.	Needs inland waterway connections to enhance efficiency. High tare-to-cargo weight ratio. One extra set of barges per ship required. System could be used for backhauls of other bulk cargo.^{R} Ship beam a major problem.^{P} Ocean freight rate competitiveness uncertain. Tax benefits. Guaranteed share of U.S. coal traffic would facilitate.

Table 7 (Cont'd)

Alternative	1981 Capital Cost (10^6 $)	Sources of Funding	Capital Recovery Mechanisms	Time Requirements		Constraints	Remarks (key system characteristics, advantages, disadvantages, etc.)
				Tasks	Years		
Extra-Wide Beam Coal Ships: 45-ft draft, 170-ft beam, 940-ft length, 143,000 dwt ship.	N/A (estimate under development).	Private shipping company.	Ocean freight rates.	Design and construction.	2-3[B]	Government subsidies unlikely. Requires most U.S. ports to be dredged to 45 ft.	Possible Marad program calling for construction of 20-40 ships over next decade. First contract awards would not be made until late 1983. Required port dredging would need same approvals as deeper, 55-ft dredging. Freight rates would be much lower than 60,000 dwt ship much higher than 55-ft draft, 150,000 dwt ship.
38-ft draft, 173-ft beam, 885-ft length, 120,000 dwt ship.	120[e],[A] (1.2 million tons/ship annually for 10 trips).	Private shipping company.	Ocean freight rates.	Design and construction.	2.5[e]	Less fuel efficient than 45-ft- and 55-ft-draft ships and requires higher ocean freight rate.[A] Government subsidies unlikely.	Would not require port dredging. Avondale shipyards would contract to build. Considers dimensions viable.[A] Higher ocean freight rates than 45-ft draft, 120,000 dwt ship are still much lower than 60,000 dwt ships.[B] Tax benefits (accelerated depreciation and higher investment tax credit for U.S. vs. foreign ships) and guaranteed share of U.S. coal traffic would facilitate. Most appropriate for shorter U.S. East Coast to Europe movements, where ship fuel use penalty is less.[A]

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[a] All estimates preliminary. Costs include Kamyr estimates of $85-100 million for delivery and return pipelines plus dewatering system and Wheelabrator-Frye estimates of $55-60 million for shoreside components and mooring buoy. Cost of 1 mile offshore pipelines would be $108-119 million. Wheelabrator-Frye system also has cost estimate of converting ships for dewatering of $1.4 million/ship.

[b] Specific mine-to-port pipeline would be 654 miles from Emery fields of Utah to Port Hueneme, California. Slurry storage/terminal facility located 2 miles southeast of Port Hueneme and mooring buoy 14,200 ft offshore to 117 ft of water. Vessels handle 350,000 dwt cargo, but 30% is water.

[c] System costs include four new $147 million ships, with one-half of financing provided by U.S. government subsidy. Currently unavailability of subsidy will significantly diminish claimed delivered freight cost advantage (see text).

[d] Federal and state approvals could take as long as four years, but certain design and construction activities could begin after two years.

[e] Preliminary estimates.

[f] Receiving vessel bound for Nippon Steel, Japan. Delivering ships were self-unloaders. Monthly shipments now being made.

SOURCES:

[A] Office of Technology Assessment (OTA), U.S. Congress, Coal Exports and Port Development (April 1981), pp. 24, 25, 72, 73, and U.S. Senate Environment and Public Works Committee, as cited by R. F. Morrison, in User Fee Calculation: Big Question for Ports, J. of Commerce, pp. 24b, 38 (Dec. 31, 1981).

[B] U.S. Interagency Coal Export Task Force, Interim Report of the Interagency Coal Export Task Force (Jan. 1981), p. 92.

[C] Coal Week International, March 18 and 25, 1981, as cited in OTA report.

Table 7 (Cont'd)

[D] Kamyr, Inc., *Coarse Coal Pipeline and Dewatering System, Onshore-Offshore; Engineering Report and Cost Estimate*, Glens Falls, N.Y., graph 2, pp. 6, 8, 25 (Sept. 8, 1981).

[E] Erwin Funk, Manager, Special Projects Group, Kamyr, Inc., personal communications, (Aug., Sept. 1981, March 1982).

[F] William D. McDonough, *A Coal Slurry Export Terminal Concept*, paper presented at Association of American Port Authorities Seminar, Mobile, Ala., pp. 5-8 (Feb. 1981).

[G] William D. McDonough, Project Manager - COSMOS, Wheelabrator-Frye, Inc., personal communications (Aug., Sept. 1981, Feb. 1982).

[H] Boeing Engineering and Construction Company, *Executive Summary: Pacific Bulk-Commodity Transportation System*, report prepared for Maritime Administration, U.S. Department of Commerce (June 1980), pp. 9-14.

[I] Leonard Kopeiken, Vice President - Business Development, Boeing Engineering and Construction Co., personal communication (Aug., Sept., 1981).

[J] Robert Kelly, Manager, Corporate Development, Continental Resources Co., Inc., personal communications (Sept. 1981, Feb. 1982).

[K] Patrick Calahan, *Economics of Topping Off Coal Ships*, (paper), New York, N.Y. (June 1981) and personal communications (Sept. 1981, Feb. 1982).

[L] Greg Storey, *Bulker Loads 160,000 Tons of U.S. Coal in Canada*, J. of Commerce,p. 11A, (Aug. 6, 1981) and L. Ryan, *Shipline Urges Superport on St. Lawrence*, J. of Commerce, pp. 1A, 3A (Dec. 21, 1981).

[M] B.H. Green, Assistant Vice President, Ryan Walsh Stevedoring Co., personal communications (Sept. 1981, Feb. 1982).

[N] Stewart Thayer, Vice President, Research and Development Design and Construction, SEABEE Division, Lykes Bros., Inc., personal communication (Sept. 1981).

[O] A.J. Spinato, Traffice Manager, Waterman Steamship Co., personal communication (Sept. 1981).

[P] Robert Martinez, Vice President - SEABEE Division, Lykes Bros., personal communication (Sept. 1981).

[R] Paul Mentz, Program Manager, Advanced Ship Systems, Office of Maritime Technology, Maritime Administration, U.S. Department of Transportation, personal communications (Sept. 1981, March 1982).

[S] Melvin Colon, Vice President, Advanced Programs, Avondale Shipyards, Inc., personal communication (Sept. 1981).

[T] "Major Container Group to Diversify into Floating Coal Terminals," *Fairplay*, p. 9 (June 25, 1981).

[U] W.M. Sterry, Manager, Coal Transportation Systems, Boeing Engineering and Construction Co., personal communication (Feb. 1982).

Appendix D.

CHANNEL IMPROVEMENTS AT UNITED STATES PORTS

Attention was forcibly drawn to the condition of the nation's port system in 1980 and 1981 when an unexpected and rapid increase in the demand for U.S. coal caused unprecedented vessel congestion off east coast ports.

The short run problem - lack of physical loading capacity - was solved in approximately 18 months times as managerial efficiencies at existing terminals, use of other loading terminals and construction of new loading terminals increased coal loading capability by more than 120 million annual tons.

The longer run problem - the United States lack of deep draft ports - has yet to be solved. At the present time the United States has only one coal port - Los Angeles/Long Beach - with a channel deeper than 45 feet. As pointed out in Appendix C of this report, there are cost savings associated with the regular use of large vessels on many coal trade routes (i.e., vesels of 100,000 dwt or greater). Many believe that if the United States is to remain competitive in the world coal market it is essential that selected U.S. harbors be deepened to accomodate deep draft bulk carriers.

Traditionally, the U.S. Army Corps of Engineers has had responsibility for both improvement (deepening) and maintenance dredging of all channels of the Nation's ports. The work has been funded through the Federal Treasury.

Federal government involvement in the improvement process has resulted in costly delays, in terms of time and money. An improvement project must be authorized by Congress, and funds must be appropriated for the work. Environmental review, permitting and court challenges add to the 20+ year time span now the average time for completion of waterway projects.

High costs of projects, coupled with limited availability of federal funds and fierce competion among ports for the few dollars available put further constraints on project approvals.

In view of these constraints numerous proposals have been made to share both the costs of new dredging projects and the costs of annual operation and maintenance. Because each port is affected in a different manner, these cost sharing proposals - which range from the Administration's suggestion that ports and port users bear 100% of all costs to proposals that the costs be shared in some way - have generated a good deal of controversy and debate over the last two years.[1]

Despite continuing and sharp disagreements on the effects of cost sharing, the importance of port improvements to the advancement of U.S. trade is recognized by the Congress and the Administration.

There are now three basic cost sharing proposals being debated by Congress. These legislative proposals are described and compared in attachment one. Briefly:

- S.865 (Hatfield, Byrd, Warner) would apply to all ports (including Great Lakes) with depths exceeding 20 feet. A National Port System Trust Fund would be established to fund port operation, maintenance, navigation improvements. Costs of navigation improvements would be shared with local share increasing as the depth increases (although local authorities would be given the flexibility to fund 100 percent of the costs if they wished). Forty percent of annual O&M costs would be paid by users (exporters, improters, coastwise shippers, Great Lakes shippers) with funds generated through a national uniform fee on value of all cargo - maximum $0.0006 per dollar. The authorization and permitting process would be expedited, although no existing laws would be obviated.

- S.970 (Moynihan) would apply to all ports (including Great Lakes) with depth exceeding 20 feet. Costs of navigation improvements would be shared with local ports share at 60 percent for projects, with depths between 20 and 75 percent at depths greater than 46 feet. Annual costs of operation and maintenance would be shared on a 50-50 basis, the users share would be paid through nationwide uniform tax on cargo tonnage. This proposal does not specifically address the need to expedite environmental review or the permitting process, although project authorization and funds appropriation is put on an expedited basis.

- H.R.2406 (Matsui) closely follows S.865 with minor diferrences in the environmental review and permitting process.

How would these proposals affect coal? It is difficult to assess the costs which would be added to a ton of export coal exiting an improved port.

We do know that under these bills a charge would be added to cover annual operation and maintenance costs. S.865 would add a legal maximum of $0.0006 per dollar value or 3.0¢ per ton on a $60.00 ton of coal. S.970 would add about 16¢ per ton to recover 50% of annual O&M charges, but this could increase over time as there is no cap on the amount. Indeed, the charge must increase if costs increase.

Recovery of the local share of costs of navigation and improvement projects are at the discretion of the port and will probably differ by port. For example, the cost could be recovered through a fee on all cargo, a fee placed only on cargo using deep draft vesels, or a tax on value of cargo. The port could choose to impose a user fee to pay for part or all of the local share of costs of the project - or could elect to cover the costs by some other means, for example, through general state tax revenues, or the port could use a combination of methods. Thus, the added costs per ton of coal for harbor improvements could go from nothing to several dollars per ton.

When assessing the economic benefit of an improvement project, each port would have to assess the competitive effects of improsing user fees of various levels on traffic in the port, compare these with economic benefits to be gained and then determine the user fee scheme best suited for the port's particular competitive position.

How do these cost sharing proposals compare with the practices of ports in other countries. As Attachment 3 shows, practices are mixed at receiver ports. Costs of navagation improvements are fully financed by the national government in Belgium, in selected locations in Germany, and the Netherlands. Elsewhere the costs are shared except in Ireland and Denmark where the user pays all. The national government is more likely to fund annual O&M costs, as is the case in Belgium, Japan, France, Italy, Netherlands.

According to information given to the CIAB, Australian ports levy a charge for maintenance (about 15-20¢ per ton in Queensland - higher in New South Wales) and there is a dredging charge of $1.00 at the port of Newcastle.

It is not believed that Canada assesses a user fee for maintenance costs.

1/ Despite the fact that these proposals were made over two years ago, the arguments for and against cost sharing are still very heated. Proponents advance two major types of justifications for cost sharing: efficiency and equity.

Efficiency. - Critics of the present system argue that when taxpayers pay the bulk of the cost of a project, inefficiencies result: interested parties are likely to promote projects that may not be cost effective.

This problem, it is contended, occurs despite the normal role of the Army Corps of Engineers in conducting benefit-cost analysis of projects. Critics of the Corps argue that Corps district offices tend to become the allies of local interests in promoting projects. In addition, benefit-cost analysis is an inexact discipline, heavily dependent on value judgements of what constitute the benefits and costs to be included in the analysis, and subject to manipulation.

Cost sharing establishes a crude but potentially effective market-like mechanism to encourage closer scrutiny of projects. As noted by one environmentalist, "The willingness of beneficiaries to cover costs is perhaps the best test of the economic merits of a water project."

These arguments have been countered in several ways. Opponents of cost sharing as a means to increase efficiency argue that deep-draft improvements are economically justified, as proved not only by favorable Corps of Engineers benefit-cost analyses (the objectivity and rigor of which are defended), but also by the financial commitments made by private industry, port authorities, and governmental units to improvements at ports targeted for dredging. Without hard financial judgements about the likelihood of increased business brought about by the combination of dredging and shoreside port improvements, it is argued, these improvements would not be made.

It is also argued that if dredging projects were prevented because of refusal by targeted parties to share costs, national benefits (described below) could be lost, resulting in greater net inefficiencies than are present in the current arrangement of Federal financial responsibility.

Equity. - Perhaps more important than efficiency arguments are arguments related to the equity of cost sharing. Advocates of cost sharing contend that it is inequitable for the Federal Government to bear the entire responsibility for deep-draft dredging operations.

Though definitions of equity vary greatly, one principle is commonly held: to the extent feasible, beneficiaries of actions should bear the costs generated by those actions. Cost-sharing proponents contend that although some benefits accrue on a national scale, the primary beneficiaries of dredging projects are specific private or geographic entities, rather than the Nation as a whole. Federal dredging is thus viewed as a subsidy to these entities, and cost sharing is viewed as a means to increase equity.

User charges are levied on other transportation-related items, such as highway use (e.g., through gasoline taxes) and airports (e.g., through aviation fuel taxes and ticket surcharges). All transportation sectors can claim similar national benefits; it is seen as unfair that dredging be completely a Federal responsibility.

Opponents of cost sharing also argue their positions on a basis of equity. Arguments have usually focused on perceived inequities of requiring port operators to contribute to dredging costs.

Contributions by non-Federal parties. Cost sharing, it is argued, should be viewed in the context of ports and harbors as a whole, rather than in regard to dredging alone. If ports rather than dredging are taken as the unit of analysis, non-Federal contributions become substantial and constitute adequate sharing of costs.

There have been billions of dollars in private-sector investment for port facilities and other infrastructure necessary to export coal and other commodities - e.g., most coal-loading dock facilities are owned by railroads or other private companies. Private firms have indicated willingness to spend additional hundreds of millions of dollars to increase U.S. coal export capacity at ports. Investment by port authorities in port facilities is similarly large, almost equalling the Federal investment in navigation works.

Local governments are required to undertake what are called conditions of local operation in partnership with the Corps of Engineers to facilitate dredging operations. These often entail such things as "procurement of property or property rights, relocation of pipelines and aerial cables, deepening of terminal areas, bridge improvements or modifications, third party liability, business and residential relocations, and the provision of spoil disposal and containment facilities." If further cost sharing is required, it is argued, the Federal Government should in turn share the revenues gained from such sources as improt duties and tonnage taxes, with port authorities, States, and/or other invovled parties.

Analysis of these arguments depends on judgement of whether or not dredging should be viewed as a separate item, or in the context of port development as a whole. Some of the arguments against cost sharing become moot if port authorities are given the power to charge user fees by legislation, and such legislation is found to be constitutional in the event of court challenge. Arguments are also inapplicable to direct Federal collection of fees.

The national interest in deep-draft dredging. Opponents of cost sharing argue that seaports and actions that enhance their capacity, such as dredging, should be viewed in terms of national rather than local interests. Some of the benefits of dredging do not accrue to specific parties, but to broad regions of the country, to the United States as a whole, and even on an international scale, to U.S. allies and foreign policy interests. Federal responsibility is thus seen as appropriate.

(Footnote reprinted from "Coal Exports and Port Development", A Report of the Office of Technology Assessment, 1982).

COMPARISON OF LEGISLATIVE PROPOSALS - PORT AND HARBOR DREDGING

Provision	Hatfield/Byrd/Warner; Matsui S.865 and H.R.2406	Moynihan/Stafford S.970	Biaggi H.R.1512
New Construction/Navigation-Improvements			
Authorization	Congressional authorization or port authority by agreeing to pay 100% of construction and incremental O&M	Congressional approval of proposed plan for project improvement. Full project appropriation automatic upon Congressional approval (federal share of costs).	Congressional authorization
Fee:			
Type	Site specific	site specific, but port instructed to tie fee with level of service.	Site specific
Base			
Level	- sliding scale: 20% (24-35 feet) to 75% (60 feet or more)	- Projects 24-45 feet, locals pay 60%; projects 45 feet locals pay 75%.	- 50% for depths exceeding 45 feet
	- Congress consents to taxes levied on foreign commerce by state or its political subdivision	- Congress consents to cargo or vessel fees or user charges provided that fees reflect service used.	- Congress consents to tonnage duties levied by state on behalf of port authority
Payment	- 50-year payback principle and interest payback does not begin until project completed.	- Port must advance ½ share during construction. Second 50% must be payed over 30 year period.	- over life of project not to exceed 50 years; in selected case, fed. would reimburse 50% of construction costs, if all had been advanced by local port authority.

COMPARISON OF LEGISLATIVE PROPOSALS - PORT AND HARBOR DREDGING (Cont'd.)

Provision	Hatfield/Bryd/Warner; Matsui S.865 and H.R.2406	Moynihan/Stafford S.970	Biaggi H.R.1512
New Construction/Navigation - Improvements (Cont'd.)			
	- Federal share paid from navigating Improvement Account of National Port System Trust Fund. This in turn is funded through customs revenues in the amount of 85% of amount generated by the collection of annual O&M fees.		
Authorization & Appropriations	Port applies to Secretary of Army to be considered for improvement. Secretary annually recommends set of projects to Congress which then approves/disapproves proposal. Annual federal dollars available raised by division of customs revenue amounting to 85% of revenue raised by national O&M fee	Congressional authorization after recommendation by Corps. Full federal share would be appropriated at time of Congressional project approval.	- Annual Congressional appropriation necessary - not guaranteed.
Operation & Maintenance			
Fee			
Type	- uniform nationwide fee - uniform vessel fee based on cargo value. On all cargoes in vessels requiring 20 ft. or more draft.	- uniform nationwide fee - uniform cargo fee on tons shipped. All vessels requiring 12 feet draft.	- Site specific

COMPARISON OF LEGISLATIVE PROPOSALS - PORT AND HARBOR DREDGING (Cont'd.)

Provisions	Hatfield/Byrd/Warner; Matsui S.865 and H.R.2406	Moynihan/Stafford S.970	Biaggi H.R.1512
Operation and Maintenance (Cont'd.)			
Base	- Export, import, coastwise includes Great Lakes	- Export, import, coastwise includes Great Lakes	- Export, import traffic
Level	- 44% of Corps total O&M costs; after 3 year phase in maximum 0.06% of value	- would recover 50% of total O&M costs; phase in to approximately 16¢ per ton by 1988 - amount necessary to meet 50% of costs. No cap on fee.	- 75% of Incremental costs only
Payment	- fees credited to O&M account of National Port System Trust Fund.		
	- if O&M collections exceed charges (individual port) excess credited towards share of construction costs for 5 years.	-	
Appropriations	No Cap.	After 1985, federal share limited to ports with O&M costs less than 5 times the National average unless non federal interests agree to pay excess charges.	No cap., all current O&M charges (to maintain existing depths) plus 25% of incremental changes funded by federal government Annual appropriation necessary.

COMPARISON OF LEGISLATIVE PROPOSALS - PORT AND HARBOR DREDGING (Cont'd.)

Provision	Hatfield/Byrd/Warner; Matsui S.865 and H.R.2406	Moynihan/Stafford S.970	Biaggi H.R.1512
Operation and Maintenance (Cont'd.)			
Great Lakes	- All Great Lakes traffic calling at U.S. ports would pay ad valorum fee. - If tolls for use of St. Lawrence Seaway is in excess of vessel tax, fee is waived. U.S. will pay costs of maintaining seaway from O&M account.	- All Great Lakes traffic calling at U.S. ports would pay fee on tonnage. - Fees collected for use of Great Lakes connecting channels would be credited to the St. Lawrence Seaway Development Commission. Tolls will be reduced accordingly.	Not applicable.

SUMMARY - POSSIBLE COSTS OF HARBOR IMPROVEMENT PROPOSALS

	IF NO DREDGING OCCURS ($/TON)		WITH DREDGING ($ TON)	
Port	S.865 and H.R.2406	S.970	S.865 and H.R.2406	S.970
Hampton Roads	$0.036	$0.16	$1.936	$3.13
Baltimore	0.036	0.16	1.336	2.95
New Orleans/Baton Rouge	0.036	0.16	0.996	1.67
Mobile	0.036	0.16	5.076	8.03

See attached sheets for assumptions and base data.

ESTIMATED COSTS OF HARBOR IMPROVEMENT PROPOSALS - 1990

ALL DOLLARS - 1980

Proposal:	S.865 and H.R.2406				S.970			
	Construction				Construction			
	Total Annual Payback 1/	$ per Ton2/	O&M Charge3/	Total	Total Annual Payback 5/	$Per Ton2/	O&M Charge	Total4/
	(1980 dollars - millions)							
Hampton Roads	$15.3	$1.90	$0.036	$1.936	$23.9	$2.97	$0.16	$3.13
Baltimore	9.7	1.30	0.036	1.336	20.9	2.79	0.16	2.95
New Orleans/Baton Rouge	16.7	0.96	0.036	0.996	26.13	1.51	0.16	1.67
Mobile	13.0	5.04	0.036	5.076	20.3	7.87	0.16	8.03

1/ Assumes 50 year payback; 6% real rate of interest; 100% advancement of funds by federal government. Pav back (local share) Hampton Roads, New Orleans, Mobile at 55%; Baltimore at 40%;

2/ Worst case assumption. ALL COSTS of dredging would be assessed only on vessels using deep draft. In each proposal, method and timing of user fee imposition is at the discretion of the port in question. Assumes 10% of all traffic in 1990 is shipped in deep draft vessels and that charges are made on a per ton basis.

3/ Maximum of 0.06% of value - assumes $60 coal.

4/ Note that this might approximate fee IN 1980 dollars, associated with shipping coal in deep draft vessels.

5/ One half this amount would be advanced by local authorities during construction period. The remainder would be reimbursed over 30 tear period. This analysis assumes that ports would finance first half of contribution in such a manner that 100% of cost would be repaid, equally over 30 years. Assumes 1980 dollars; 6% real rate of interest.

ESTIMATED COSTS AND TRADE, BY PORT - BASE 1990 DATA

	HARBOR DREDGED TO: (ft)	Dredging Cost	O&M Cost		1990 Total Trade (million short tons)
			EXISTING	INCREMENTAL	
		(millions 1980 dollars)			
Hampton Roads	55	$438.5	$ 3.2	$ 6.1	80.6
Baltimore	50	383.7	2.1	1.6	74.9
New Orleans/Baton Rouge	55	479.6	14.9	125.1	173.5
Mobile	55	371.8	4.6	2.8	25.8

Source: Department of Energy, Statement of J. Erich Evered, April 21, 1983.

Cost estimates are Corps. of Engineers.

Total trade estimates include exports, imports, coastwise.

Statement of
Louis Carlson, Co-Chairman
National Association of Wheat Growers
Transportation Committee
Before the
Water Resources
Subcommittee of the Senate
on
Port Improvements and Maintanance
June 27, 1983

Mr. Chairman, members of the Subcommittee:

My name is Louis Carlson, I am a wheat grower from eastern Oregon and Co-Chairman of the Transportation Committee of the National Association of Wheat Growers (NAWG). I want to thank you for the opportunity to appear before you today to present the views of NAWG on legislation designed to maintain and improve harbor facilities. Wheat growers throughout the nation agree that ports on all coasts need to be upgraded and maintained to assure continued and competative exports from the United States. What concerns us is the method and degree to which the users of harbor facilities will be required to pay for continued maintenance and operation, and deep-draft operations.

It is not hard to understand why wheat growers have an interest in the legislation before this Subcommittee. Exports account for fully one-fourth of farmers marketing returns and one out of every three acres harvested goes into world trade. In FY 1982, agricultural exports amounted to 158 million tons ($39.1 billion), and although this level will drop in FY 1983, the amount is still substantial by anyones standard. Wheat exports alone accounted for 41.5 million metric tons in the 1982/83 crop year and will be at a level of 38mmt this crop year. These wheat exports amounted to $7.6 and 6.5 billion in trade, respectively. In my own state of Oregon, $226.5 million was generated by the sale of wheat for exports in 1982. In the Chairmans state the level was $217.8 million. It is of interest to note that of the seven states represented on this Subcommittee, the total dollar value of wheat exported from these states amounted to just under $1.6 billion, or 21 percent of all wheat dollar exports. (New Hampshire has no recorded wheat export figure).

The dollar amount and quatity of exports has been declining over the past several years due to a strong dollar, global recession, lagging demand, large world supplies, and subsidization of exports by our competitors. All of this translates into low farm income. Total net farm income in 1983 is expected to range between $18 and $22 billion, compared with $20.4 billion in 1982, $25 billion in 1981 and $20 billion in 1980.

With the current large world supplies and reduced demand and the fact that the farmer is a price taker, it is evident that any increase in transportation costs will further reduce farm income. International competition is keen, and any duty, tax, level, fee or other funding mechanism attached to wheat exports and designed to raise revenues for harbor improvements will not be passed on to the importing nation or the shipper, but will fall on the producer. If foreign buyers were to be forced to pay a higher price, the amount of sales would drop, again reducing the level of farm income. Given the fact that farmers are facing the worst income prospects since the depression, it would cause great hardship if additional financial burdens are placed upon the producer at this time.

It is understood that one of the objectives of the proposed legislation is to provide harbor improvements so that "supercolliers" of 100,000 tons deadweight or more and require drafts in excess of 50 feet will be able to operate in U.S. ports. However, the grain industry is not in need of deeper draft ports. The typical vessel of the grain trade has a draft of less than 40 feet and a capacity of up to 60,000 tons. Of the principal receiving ports of America grain, only one (Rotterdam) has a maximum channel depth exceeding 41 feet. Grain and other products that do not depend upon deeper ports will pay a portion of harbor costs associated with deeper-draft dredging projects without receiving any benefits. In fact, agricultural shippments may be adversely affected by additional vessel traffic and the ports' desire to cater to "supercolliers", thus placing grain vessels in a secondary position. It is our position that farmers should not be taxed to pay for harbor improvements they do not need and which in fact may hinder their ability to export their product.

We fully agree with the sponsors of the legislation that fees should not be designed to recover the entire costs of port operations and maintenance. Benefits accrue to large segments of the economy which are not direct users of harbor facilities. For example, every $1 billion in agricultural exports accounts for 35,00 jobs and a recent study found that for every $1.00 in agricultural products exported, a total of $2.05 in benefits accrue to the U.S. economy. Similar benefits could be shown for other industries utilizing U.S. harbors. Any cost recovery system must be structured to assure that these related economic benefits are not lost.

Mr. Chairman, the wheat growers know how hard the members of the Subcommittee have worked over the years to form legislation that is fair and equitable. The ad valorem approach is by far the best method so far developed. NAWG supports the upgrading and improvement of our harbors so long as farmers income is not reduced through the cost recovery structure.

I would be happy to answer any questions you may have.

TESTIMONY

OF

GOVERNOR JAMES R. THOMPSON

STATE OF ILLINOIS

INTRODUCTION

The federal government has historically been responsible for construction, maintenance and operation of the nation's navigation channels and harbors. Following Administration initiatives, Congress is considering various bills which would alter that historic role by requiring user charges to recover federal expenditures for the operation and maintenance of and improvements to the nation's deep-draft navigation system. The FY 1984 federal budget estimates the cost of operation and maintenance of the deep-draft navigation system at $200 million.

The Great Lakes and the St. Lawrence Seaway are important components of the nation's deep-draft navigation system. The Great Lakes play an essential role in meeting the waterborne commerce needs of the country and it is important that any legislation to implement user charges on the deep-draft navigation system not diminish that role.

The purpose of this testimony is to describe the unique traffic characteristics of the Great Lakes/Seaway system in meeting the maritime needs of the country, to urge no action by Congress on user charge legislation until an ongoing Great Lakes User Charge Study has been completed, and to present Illinois' recommendations for provisions that should be included in such legislation. Illinois may have additional recommendations after the user charge study is finished.

GREAT LAKES WATERBORNE COMMERCE

Because of the unique traffic characteristics of the Great Lakes/Seaway System, the imposition of user charges may pose severe economic disruptions for the ports, carriers, port labor, and shippers. This would affect shipments between U.S. ports on the Great Lakes, between U.S. and Canadian ports, and in international trade to and from overseas markets. In 1980, the Great Lakes handled 175.7 million tons of cargoes of which 65.5 percent was domestic traffic between U.S. Great Lakes ports, 28.8 percent was U.S.-Canadian trade, and 5.7 percent was international cargo. The cargoes were primarily bulk commodities composed of iron ore (42 percent), coal (22 percent), limestone (13 percent), grain (9 percent) and various other products (14 percent).

Hardly any general cargoes are currently transported on the Great Lakes. This is primarily because of the downturn in overseas sailings which began during the 1970's and has continued to the present. For instance, in 1971 at the Port of Chicago, a total of 683 vessels called in overseas trades. The number of sailings decreased to 189 in 1981 and to only 156 in 1982. A number of factors have contributed to the reduction in Great Lakes vessel sailings. These have included the limited 8-1/2 month shipping season through the St. Lawrence Seaway, the size of the locks which restricts the type of vessels that can enter the system, the Soviet grain embargo, inequitable allocations of government preference cargoes, and the imposition of tolls on the Seaway while no other deep-draft facilities have been charged. The imposition of deep-draft user charges, without consideration of the special impacts on the Great Lakes, may further diminish the role of the Great Lakes as a water transportation route.

USER CHARGE STUDY FOR THE GREAT LAKES

Spokesmen for both the Corps of Engineers and U.S. Department of Transportation indicate that they do not see the necessity for a study of user charge impacts on the deep-draft system. Their argument is that, with the fee being the same at any port, there will be no disruptions, and that the size of the fee as compared to the total cost of commodities in the international market is too small to measure. Unfortunately, they fail to recognize that for the Great Lakes the largest movement by far is domestic, between U.S. ports and the second largest movement is between the U.S. and Canada. These two movements are susceptible to modal diversion which, for the most part, our export and import movements are not.

Due to the uncertainty of the impacts of user charges, and the potential for severe economic disruptions, the Great Lake states, working through the Great Lakes Commission, are conducting a Great Lakes User Charge Study. The objectives of the study include a determination of user charge impacts on total Great Lakes transportation costs, regional impacts of higher transport costs and commodity diversions, potential for replacement of materials and products from Great Lakes suppliers with similar materials and products from other regions and supply sources, and the impact on the competitiveness of Great Lakes industries relative to other domestic and foreign producers as a result of user charges. The study, which is being conducted by Data Resources Inc., will be completed by early August. The results of the Great Lakes User Charge Study will document the economic impacts of user charges on the Great Lakes and will enable us to more effectively respond to user charge proposals by the Administration and Congress.

ILLINOIS POSITIONS

Illinois has carefully considered all the issues involved in establishing user charges at deep-draft ports. We would prefer that Congress not move forward on legislation without the information on Great Lakes impacts that will be obtained from the aforementioned study. However, since the Water Resources Subcommittee intends to proceed to mark up a deep-draft bill, Illinois recommends the following provisions, some of which provide for the special concerns and problems of the Great Lakes/Seaway System.

Eliminate the existing tolls on the U.S. portion of the St. Lawrence Seaway.

The connecting channels of the Great Lakes and the U.S. portion of the St. Lawrence Seaway should be considered a part of the national deep-draft system. Tolls should no longer be collected for operation and maintenance O&M costs of the U.S. portion of the Seaway, and these O&M costs and those for the connecting channels should be paid from the trust fund.

For the past 24 years, the St. Lawrence Seaway has been the only deep-draft navigation project in the United States for which the users have paid tolls to defray the costs. This undue burden on the Seaway has been a major factor in reducing the shipment of international cargoes to and from Great Lakes ports. In recognition of this, Congress last year eliminated repayment of the Seaway debt but users still pay tolls to cover O&M. Great Lakes users should not have to be burdened with paying these tolls in addition to the new port fees.

There are seven locks on the St. Lawrence Seaway of which five are in Canada and two are in the U.S. Eliminating the tolls at the two U.S. locks would reduce overall tolls by about 16 percent and would provide an impetus for negotiations with Canada to eliminate the tolls on the remaining part of the Seaway.

I suggest that a deep-draft user charge bill include the provisions of H.R. 2872, introduced by Representative William Lipinski of Illinois. This would terminate the St. Lawrence Seaway Development Corporation and establish a St. Lawrence Development Administration within the U.S. Department of Transportation and would remove any authority to collect tolls at the two U.S. locks on the Seaway. Under this proposal, the operations of the Seaway would be paid from general revenues. As an alternative, O&M could be paid from the new user charges. In addition, the Secretary of State, in consultation with the Secretary of Transportation, would be instructed to begin negotiations with Canada for the purpose of reducing or eliminating all tolls on the Seaway.

Establish a national uniform user fee for deep-draft commercial navigation.

Illinois urges a national uniform user charge so that no port would increase its competitive position due to the imposition of user charges. The charges should be collected by a federal agency rather than by individual ports.

Based upon federal estimates of the O&M costs for individual ports, port-specific charges in the Great Lakes would be two to eleven times higher per ton than the charges at some of the competing tidewater ports on the East and Gulf coasts. Clearly, major economic disruptions would occur to the Great Lakes maritime industry if port-specific charges were instituted.

Because much of the cargoes handled on the Lakes are relatively low value commodities such as coal, iron ore, and limestone, the Great Lakes ports support an ad valorem fee, whereby the fee would be set according the value of the commodity. Under such a proposal, low value bulk raw materials would pay a lower fee while higher fees would be assessed on containers and manufactured goods which are higher valued. This would ensure that the bulk traffic shipped through Great Lakes ports did not subsidize higher value goods shipped through coastal ports. A cap should be imposed on the value on which the charge is based so as not to unduly burden the price competitiveness of high valued commodities.

The Great Lakes User Charge Study will discuss the impacts of ad valorem versus tonnage user charges on commodities shipped on the Great Lakes. We will use the results of the study, along with an analysis of the tonnage and value of bulk commmodities and manufactured goods shipped to and from Illinois, to determine the potential impacts of both types of charges on the economy of the state. Upon completion of our analysis, we will offer supplemental testimony on the type of charge which should be established.

Collect the fees directly from the users by a federal agency.

For ease of administration by the U.S. government and to prevent the collection of charges from becoming an undue inconvenience for shippers and vessel operators, the user charge should be collected at one time by a federal agency. The most likely point to collect the charge is at the port of loading for domestic and export shipments and at the port of unloading for imports.

Let Congress establish the specific fee.

Congress, as opposed to a Federal agency, should set the fees to be collected from the users of the deep-draft navigation system. This approach to establishing fees will better enable the states, ports and maritime users to participate in the determination of fees.

Set a maximum of 25% cost recovery for operation and maintenance, phased in over a 5-year period in increments of 5%.

To reduce the adverse economic impacts of user fees, we support an incremental implementation. It would start at 5% and increase 5% per year until it reached a maximum of 25%. This would reduce the impacts to the users of the system and allow them to adjust their prices and services over a longer period of time.

Place user charge revenues in a distinct trust fund and dedicate them exclusively for the operation and maintenance of the deep-draft commercial navigation system.

A distinct trust fund should be established for the deep-draft user charges similar to the trust fund that was established for revenues from the user charge on fuel consumed by tow-boats on the inland waterways. Funds in the trust fund should be used only for O&M of the deep-draft system, not for new construction.

The non-federal share of construction costs would be paid by the local sponsor, using a consistent policy that should specify that the non-federal share be a certain percentage of project costs instead of the existing policy which specifies that the non-federal share include lands, easements and rights-of-way. The federal share would be paid for from general revenues of the federal government and not from the trust fund since the trust fund would be for the purposes of operation and maintenance of the existing system.

Define maintenance as only activities necessary to maintain channels and harbors to the authorized depth, including construction of confined disposal facilities and rehabilitation of breakwaters, locks and other controlling works and structures that are necessary to maintain the existing capacity of the system.

These types of projects are needed at ports on the Great Lakes and on other coasts to maintain the navigability of the ports and channels. Unlike new construction projects to increase the capacity of the ports and channels, these projects are necessary to maintain existing capacity, and, as such, should be designated as O&M costs.

Do not collect user fees from vessels using only the Great Lakes connecting channels.

One difficult issue is how to handle cargoes that are transiting the connecting channels of the Great Lakes without calling at a U.S. port. The connecting channels of the Great Lakes including those presently under the administration of the St. Lawrence Seaway Development Corporation should be considered a part of the national deep-draft commercial navigation system.

For vessels using the U.S. locks at Sault Ste. Marie (there are both U.S. and Canadian locks), it would be possible to charge some sort of fee for vessels using the U.S. locks that did not have a U.S. port of call. In the St. Clair River, the problem becomes a little more difficult, since there is no easy way to collect a toll on that part of the system. I am not quite sure how this issue ought to be handled other than that from the standpoint of movements to or from U.S. ports, the connecting channels should be considered part of the system and there should be no user charge.

Set the non-federal share of the construction costs of new projects or the deepening of existing ports should be based on a sliding scale which starts at 25% for projects with depths between 14 feet and 35 feet and increases for projects with depths greater than 35 feet.

The Federal government has a substantial interest in the operation of a viable port network which contributes to regional and national economic development and the national defense. Because of these reasons and the high cost to construct new port facilities and to deepen existing ports, the federal government should provide most of the funds for these projects. The deeper the project, the larger the vessels and thus cargoes which can be handled at a port and the greater is the ability of the port to pay a higher share of the construction costs.

Develop fast tracking procedures for appropriate economic and environmental analyses to shorten the approval and implementation process for navigation projects.

Under current project authorization and review procedures, the average navigation project requires nearly 25 years between project authorization and construction. Fast-tracking procedures, which set forth specific time periods for actions by federal agencies, should be included in user charge legislation to significantly shorten the project development timeframe.

CONCLUSION

The State of Illinois is very concerned about the various issues involved with imposing user charges on cargoes shipped through deep-draft ports. The impact on shipments to and from Great Lakes ports could be quite substantial. We feel that it is most important that tolls on the U.S. portion of the St. Lawrence Seaway be eliminated if deep-draft user charges are adopted. The State also encourages the Subcommittee not to take final action on user charge legislation until the Great Lakes User Charge Study has been completed and the findings and recommendations reviewed.

Thank you for the opportunity to present Illinois' concerns and recommendations. These legislative proposals will have a significant economic impact on shipping through deep-draft ports. It is important that any legislation treat all parts of the country and all types of shipments equitably and rationally. I feel Illinois' recommendations would help the proposed legislation achieve these objectives.